The previous scheme Guide - online law and policy

The guide is CSA's legal resource.

The guide sets out CSA's policy and view of the child support scheme and its administration. It is organised into parts, chapters and topics. Links to the parts are listed on the left of this page. The guide heading on every page will bring you back to this page.

The guide is produced by CSA's Legal & Quality Assurance section. CSA staff are expected to follow The guide except where it would result in an anomaly. Staff are expected to report any anomalies to CSA's Legal & Quality Assurance section so that corrective action can be taken.

Feedback is always welcome.

Note: External users should not use the guide in place of independent legal advice. The Commonwealth accepts no liability for any loss suffered as a result of reliance on any material in The guide.

Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

Part 1: About the scheme

Introduction

This part gives a background to the introduction of the child support scheme, its objects and details of legislative changes to the scheme.

In this part

The chapters in this part describe the objects of the child support scheme, the background of the scheme and a brief history of legislative amendments, as well as a discussion of Australian residence and overseas cases.

Contents

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

Part 2: Child support assessments (stage 2)

Introduction

CSA can make an administrative assessment of child support for eligible stage 2 cases.

In this part

The chapters in this part describe the rules relating to child support assessments.

Contents

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

Part 3: Orders under the Family Law Act (Stage 1)

Introduction

Prior to the introduction of the *Child Support (Assessment) Act 1989* (the Assessment Act), child maintenance in Australia was determined by the courts on a case-by-case basis. Financial support for children was determined under the *Family Law Act 1975* along with other issues arising from family breakdown including spousal maintenance.

Parents who separated and whose children were born before 1 October 1989, where there was no private arrangement, may have a court order for maintenance or a court-registered maintenance agreement. These cases are commonly referred to as Stage 1 cases.

There are other maintenance orders made under the Family Law Act which are also referred to as Stage 1 court orders where parents or children are not eligible for an assessment under the Assessment Act.

From 1 January 2007, CSA can register for collection an order made under section 143 of the Assessment Act requiring a former payee to repay to a former payer a specified amount of child support for a child of whom the former payer is not the parent. These registrable debts are referred to as 'parentage overpayments'.

In this part

The chapters in this part describe the types of orders the court can make under the Family Law Act, what is a Stage 1 registrable maintenance liability, notification requirements, how court orders are varied and some hints on how to interpret difficult clauses and commonly used expressions.

Contents

Version 1.1

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

Part 4: Objecting, appealing and applying to court

Introduction

A parent can seek an internal review of certain CSA decisions; an external review of certain other CSA decisions and a judicial review of some CSA decisions. A parent can also apply to a court for orders about a range of other child support matters.

In this part

The chapters in this part describe the rules relating to objections, reviews, appeals and court applications under the Child Support legislation.

Contents

Version 1.1

Issued 1 January 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

Part 5: Collecting child support

Introduction

A payee can choose to collect child support privately or to have it collected by CSA. This part outlines private collection and CSA collection of child support and the methods for enforcing payment.

In this part

The chapters in this part explain the options for private collection by a payee as well as CSA collection and enforcement of child support.

Contents

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

Part 6: Administration

Introduction

CSA administers the Child Support legislation and is subject to the provisions of other legislation such as the Privacy Act and the Freedom of information Act.

In this part

The chapters in this part describe the various provisions that affect how CSA administers child support cases.

Contents

	complaints and learns from its mistakes.
	Family violence
Chapter 6.10	This chapter describes how CSA will manage child support cases where there is a risk of Family violence.
Chapter 6.11	*Compensation and waiver*

Version 1.1

Issued 22 July 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

A to Z index

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

A

B

C

D

E

F

G

H

I

J

L

M

N

O

P

R

S

T

U

V

W

1.1: Background

In this chapter

This chapter describes what the child support scheme is and the background to its establishment.

Contents

Version 1.1

Issued 1 January 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.2: Legislative history

In this chapter

This chapter describes the major amendments to the child support scheme since it started in 1988.

Contents

Version 1.1

< Previous Next >

1.3: Objects of the scheme

In this chapter

This chapter describes the objects of the *Child Support (Assessment) Act 1989* (the Assessment Act) and the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act).

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.4: Western Australia and the child support scheme

In this chapter

This chapter describes the current and previous application of the child support scheme to children who live in Western Australia whose parents were never married.

Contents

Version 1.3

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.5: Australian residence

In this chapter

This chapter describes how CSA will decide whether a payer is a resident of Australia for the purposes of the Child Support legislation; and whether a child meets the residence requirements for a child support assessment.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

How can a payee get child support from a payer who is a resident of Norfolk Island?

A payee can apply for a court order for maintenance from a payer who is resident of Norfolk Island and register that order with CSA for collection.

How can a payee get child support from a payer who is a resident of the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island?

The Territory of Cocos (Keeling) Islands and the Territory of Christmas Island are both reciprocating jurisdictions. A payee can apply under the *Child Support (Assessment)(Overseas-related Maintenance Obligations) Regulations 2000* for a child support assessment payable by a payer who resides in one of these territories.

Version 1.0

Issued 1 October 2002

< Previous Next >

1.6: Overseas cases

In this chapter

This chapter describes the treatment of maintenance liabilities where one of the parents is resident overseas. These liabilities include child support assessments and court-ordered child maintenance and spousal maintenance.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.3

Issued 27 July 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.1: Applying for a child support assessment

In this chapter

This chapter describes how CSA will make a decision on an application for administrative assessment.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.2: Eligibility (including parentage and care)

In this chapter

This chapter explains who is eligible for an administrative assessment. CSA can only accept an application for a child support assessment when the child, the payee and the payer are each eligible under the Assessment Act. The following topics explain the eligibility requirements for children, payers and payees as well as parentage and levels of care.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

What can a parent do when CSA refuses an application because the eligibility requirements are not met?

If it is not possible for a person to meet the eligibility requirements (e.g. the child was born before 1 October 1989 and has no siblings) the applicant can seek a court order for child maintenance under the Family Law Act.

Can a foster carer be eligible for a child support assessment?
A person who fosters a child may be eligible for a child support assessment if they are a parent or relative of the child. However, if the child is in foster care under a law of Queensland, South Australia, Western Australia, Norfolk Island, Christmas Island or the Cocos (Keeling) Islands they are not able to get an assessment as the child is not an eligible child.

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.3: Child support periods

In this chapter

This chapter describes the start and end dates of child support periods and which financial year of income CSA will use when making an assessment for a child support period.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

What happens if a payee's tax return does not affect the rate of child support payable when it issues but is later relevant because of a change in care /arrangements (i.e. payee's income is between the exempt and disregarded levels and the care arrangements change from sole to shared/sub/major care)?

CSA will amend the existing assessment to take into account the change in care, but it will not make a new assessment to apply to a new child support period. The payee's latest income can be taken into account when a new child support period starts (as long as it is for the last relevant year of income for the next assessment).

Will a new agreement always start a new child support period?

No. An agreement will start a new child support period only if it changes the rate of child support payable. The new child support period starts on the date the agreement affects the rate of child support. If a case starts with an agreement a new child support period starts on the date the liability commences under the agreement.

Does a change of assessment or departure order start a new child support period?

No. Nor does a child support period end when the change of assessment decision or departure order ends.

Does a child support period end at the end of an agreement, change of assessment decision, or departure order?

No. The existing assessment continues after the end of an agreement, change of assessment decision or departure order. The case will revert to the usual formula assessment for the rest of the child support period. The last relevant year of income will stay the same (the last year of income that ended before the start of the period).

CSA may be required to make a new assessment if a later tax assessment has issued during the life of the agreement, change of assessment decision, or departure. If so, it will make the assessment during the last month that the decision, order or agreement had effect and it will apply to a child support period that starts on the first day of the following month.

Version 1.1

Issued 1 January 2008

< Previous Next >

2.4: Formula assessment

In this chapter

This chapter describes the administrative formula CSA uses to calculate a child support assessment. It explains what income CSA uses when it makes a child support assessment and how a parent can change their assessment if their income changes.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.6

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.5: Agreements

In this chapter

This chapter describes how parents can make child support agreements. It also describes the effect of a child support agreement upon CSA's child support assessment.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

Can a parent apply for a child support assessment after CSA has accepted an agreement to end an earlier child support assessment?

Yes. The agreement to end an assessment is a terminating event. It does not preclude CSA making another child support assessment if either parent later makes another application for a child support assessment.

Version 1.2

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6: Change of assessment in special circumstances

In this chapter

This chapter describes the issues that CSA has to consider when making a decision to change an assessment under part 6A of the Assessment Act.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.7: Court variation to assessments

In this chapter

This chapter describes when a court can make orders that affect a child support assessment and how CSA interprets court orders which will affect an assessment.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.2

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.8: Making, amending and ending child support assessments

In this chapter

This chapter describes the procedural rules for making assessments and for amending or ending assessments. It includes the information about when the minimum rate of child support is applied and the details required in a notice of assessment.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 1 January 2008

< Previous Next >

2.9: Liability to pay a child support assessment

In this chapter

This chapter describes how an assessment creates a liability to pay child support and when those amounts are payable.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial cases as at 1 October 2002.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.6.5: International agreements and conventions

Context

Australia is a party to a number of international agreements and conventions about international maintenance obligations.

Legislative References

Section 111 of the *Family Law Act 1975*

Regulations 40-56 and 84, schedules 3 and 14 *Family Law Regulations 1984*

Explanation

Australia and New Zealand agreement

Hague convention on the recognition and enforcement of decisions relating to maintenance obligations

Agreement between Australia and the United States of America

United Nations convention on the recovery abroad of maintenance (UNCRAM)

Australia and New Zealand agreement

The Australian and New Zealand governments entered into an agreement to facilitate the collection of liabilities under administrative assessments of child support from 1 July 2000. Under the agreement, the New Zealand Inland Revenue Child Support and CSA can collect child support liabilities assessed by the other authority.

The agreement limits the jurisdiction of the 2 contracting states (i.e. Australia and New Zealand). The contracting state where the payee is habitually resident will issue and administer the assessment, and the other contracting state where the payer resides will be responsible for collection. The agreement provides that a child support assessment made in one contracting state will end from the date that contracting state receives written notice that the payee is habitually resident in the other contracting state. The notice can be from the payer, payee or the other contracting state.

The full text of the agreement appears at schedule 1 of the Child Support (Registration and Collection) (Overseas-related maintenance obligations) Regulations.

Habitual residence

Habitual residence is a term used in many international instruments and is used specifically in the Australia and New Zealand agreement to define each country's jurisdiction. It is intended to be a simple non-technical term, applied to the facts of each case. A person's country of habitual residence is the country in which a person usually lives. 'Residence' means more than presence, as it refers to a place where a person resides or lives for a settled period. 'Habitual' indicates that something more than occasional or short-term residence is required, but continuous presence is not required. A person who is present in a country as a tourist or in transit is not habitually resident in that country.

Examples

> M arrived in Australia recently and stated on their entry documents that they intend to establish themselves in Australia. M is considered to be a habitual resident of the country from their entry date.

F has been living in New Zealand for 8 months and appears to have no immediate intention to leave jurisdiction. F is considered to be a habitual resident of that country.

Hague Convention on the Recognition and Enforcement of Decisions

On 1 February 2002 Australia became a contracting state to the *Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations 1973* (Convention #23). The other signatories to the Hague Convention are mainly European countries that Australia previously had no reciprocal arrangements with and relied on applications to be sent under the United Nations Convention (see below). The convention applies to both spousal and child support obligations. It has the effect of establishing bilateral reciprocal agreements with other contracting states to recognise and enforce maintenance decisions made by judicial or administrative authorities in convention countries.

Like the New Zealand agreement, the Hague Convention provides for the recognition of administrative assessments (rather than just court orders or court registered agreements). The convention provides for the relatively simple and speedy enforcement of existing Australian liabilities by overseas courts and administrative authorities. However, a contracting state will only recognise a decision of an administrative authority such as CSA if the laws of that state support that recognition.

The Hague Convention [PDF 46k]

Agreement between Australia and the United States of America

The *Agreement between the Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations* came into force on 12 December 2002. It replaces the former non-treaty arrangements between Australia and some individual states of the USA.

The agreement:

- deals with the enforcement of court orders and administrative assessments;
- provides for a liability to be created in and varied in the country in which the payee is resident except where the liable parent has had no or little connection with Australia. In these cases the individual State where the liable parent resides would claim personal jurisdiction where a new liability is sent to them and the payee in Australia would have to petition the USA requesting a liability be established in the USA. Where a US liability is registered in Australia and the payee still lives in the State where the liability was initiated, that State will claim continuing jurisdiction over the liability. Therefore the USA cannot recognise an Australian court variation to the liability in spite of this being available to the liable parent in Australia and recognised in Australia;
- obliges each country to assist in locating payers, serving notices and providing advice; and
- provides for the protection of privacy and for information sharing.

For Australia, the agreement applies in Australia, Norfolk Island and the territories of Christmas and Cocos (Keeling) Islands. For the USA, the agreement applies in the fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act.

Agreement between Australia and the United States of America [PDF 29k]

United Nations convention on the recovery abroad of maintenance

The *United Nations Convention on the Recovery Abroad of Maintenance* (UNCRAM) was signed in New York on 20 June 1956. It aimed to overcome the legal and practical difficulties involved in establishing claims for maintenance abroad where other reciprocal arrangements did not exist.

Australia is a contracting party to the convention, which operates in Australia through provisions in the Family Law Act (section 111) and Family Law Regulations (regulations 40-56). The text of the convention appears at schedule 3 to the Family Law Regulations.

A payee in an UNCRAM country can make an application to another UNCRAM country in which the liable parent resides for that country to establish a maintenance liability on their behalf. A few UNCRAM countries, but not including Australia, will register an existing liability under this convention but only where their domestic

law allows. The current active UNCRAM members are listed in schedule 4 of the Family Law Regulations. Wherever possible, Australia will use other arrangements in place with a reciprocating jurisdiction in preference to making applications under UNCRAM.

A payee may need to make an UNCRAM application if they are seeking maintenance from a payer in an UNCRAM country, but cannot do so under reciprocal arrangements (e.g. because the laws of the reciprocating jurisdiction do not currently allow that jurisdiction to recognise a child support assessment). Legal Aid in each Australian state and territory can assist a payee to prepare an UNCRAM application for a liability to be created (Article 3) or for recognition of an existing child support assessment or court order (Article 5). CSA will transmit the application to the relevant country along with a copy of the child support assessment (or court order, if a child support assessment cannot be made).

A court in the receiving UNCRAM country (i.e. where the payer resides) will decide the level of maintenance payable under the relevant law in that jurisdiction (Article 6 of the convention). It may take into account the information provided by CSA in making that decision.

Version 1.3

Issued 27 July 2005

< Previous Next >

3.1: Types of orders

In this chapter

This chapter describes the types of orders a court can make under the *Family Law Act 1975* (Family Law Act) which can be registered and enforced by the Child Support Agency. It also describes court-registered maintenance agreements.

Orders made under the *Child Support (Assessment) Act 1989* are not discussed in this chapter.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.2: What is a stage 1 registrable maintenance liability?

In this chapter

This chapter describes the kinds of maintenance liabilities that CSA can register apart from those which arise under child support assessments. CSA refers to these non-assessment liabilities as Stage 1 liabilities.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.3

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.3: Notification of a stage 1 liability

In this chapter

This chapter explains the requirements for payers and payees to notify CSA when a court makes an order or registers an agreement that starts or varies a registrable maintenance liability.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.4: Variations to stage 1 liabilities

In this chapter

This chapter describes how and when CSA will vary the register entry for a stage 1 registrable maintenance liability.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

The payee of an existing liability provides a new order to CSA 3 months after it is made. Does CSA vary the liability from the date of receipt?

No. Once CSA has registered a liability, it must vary the register to give effect to any court orders that affect the liability. The variation must be made according to the terms of the order. The date CSA received the order is irrelevant.

Can CSA suspend collection of spousal maintenance when the payer is unemployed?

No. Only a payer of a stage 1 child maintenance liability can apply for a low-income non-enforcement period.

Can CSA suspend collecting a stage 1 child maintenance liability when it has confirmed that the child is not in the payee's care, even though it is unable to contact the payee?

CSA can only suspend collection of a liability for a period when the child is not in the payee's care if both the payer and the payee make a joint election. If the payee can't be contacted, or if the payee does not wish to make an election, the paying parent would need to make an application to court to have the order or court registered agreement varied.

A payer advises that the child was not in the care of the payee for 6 months, but has now returned to the payee's care. Can the liability be suspended for those 6 months?

No. The election for a non-care non-enforcement period must be made during the 'overall non-care period'. This period ends when the child returns to the payee's care and the administrative option is no longer available.

The payer is unemployed, but does not receive a social security benefit as their new partner is employed. Can they apply for a low-income non-enforcement period?

No. The liability is suspended when the payer receives a social security pension or benefit. A payer cannot

apply for a low-income non-enforcement period unless they receive a pension or benefit. The payer would need to make an application to the court to have the order varied.

CSA has accepted the payer's application for a low-income non-enforcement period. The payee believes that the payer has the capacity to pay the liability. What options are available to the payee?

The payee can object to CSA's decision to suspend the liability. If the objection is not successful, the payee can apply to the court for enforcement of the payments due under the order. Alternatively the payee could apply to the court to have the court order varied to specify an amount to be payable when the payer is in receipt of a benefit.

What does CSA do when it finds out that the payer who has a low-income non-enforcement period failed to satisfy the prescribed income test some time ago, but is still receiving a social security pension or benefit?

CSA can determine multiple low-income non-enforcement periods during any period that the payer is continuously receiving a social security pension or benefit. CSA will end the low-income non-enforcement period from the date the payer failed to satisfy the prescribed income test and start another low-income non-enforcement period from the date the payer next satisfied the prescribed income test.

Can a payer apply for a low-income non-enforcement period for a period when they were previously in receipt of a social security benefit?

No. A payer must be in receipt of, or have claimed a social security pension or benefit on the day that they apply for a low-income non-enforcement period. CSA can determine a commencement day for the low-income non-enforcement period that is earlier than the date of the payer's application, but it cannot be before the date the payer commenced to receive a social security pension or benefit on this occasion. If the payer failed to apply for a low-income non-enforcement period during previous periods of unemployment, they can seek a variation to their court order for that period.

Can CSA continue to collect arrears of child support during a low-income non-enforcement period?

Yes. The payer is not required to pay child support in relation to the days in the low-income non-enforcement period, but they are still liable to pay child support in relation to the days before the low-income non-enforcement period. CSA can take enforcement action for arrears, including asking Centrelink to make deductions from the payer's social security pension or benefit. (See chapter 5.2)

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.5: Interpreting stage 1 court orders

In this chapter

This chapter describes the meaning of common terms used in court orders and some hints on interpreting difficult clauses.

Contents

w

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 1 January 2007

< Previous Next >

2.9.2: Recovery of child support

Context

The Assessment Act and Registration and Collection Act set out how a payee can privately recover amounts payable under a child support assessment.

Legislative References

Section 79 *Child Support (Assessment) Act 1989*

Sections 113 and 113A *Child Support (Registration and Collection) Act 1988*

Explanation

A payee can sue the payer for child support payable under a child support assessment. The payee can sue whether the amount is registered for collection by CSA or not. However, if the amount is registered for collection by CSA the payee must first give CSA notice that they intend to sue. The payee can recover unpaid child support in:

- a court having jurisdiction for the recovery of debts up to the amount of the child support; or
- a court having jurisdiction under the Registration and Collection Act (section 79).

See chapter 5.4 Court enforcement for details of courts with jurisdiction.

If the amount owed is registered for collection by CSA also see Chapter 5.4.

Version 1.1

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

4.1: Objections

In this chapter

This chapter describes the objections process provided for in *the Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* and what parents can do if they think that CSA has made a wrong decision on their case.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children. See Chapter 1.4 Western Australia and the child support scheme for details of the date from which various provisions had effect.

Version 1.2

Issued 30 April 2003

< Previous Next >

4.2: External review applications to the AAT

In this chapter

A parent can apply to the Social Security Appeals Tribunal (SSAT) for a review of most CSA objection decisions. This chapter explains which decisions the SSAT can review and the process involved.

A parent can apply to the Administrative Appeals Tribunal (AAT) for a review of certain CSA decisions regarding Departure Prohibition Orders. See Chapter 5.2.8 for information on the review provisions.

The AAT can also review CSA decisions on FOI applications. (See Chapter 6.6)

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.2

Issued 1 January 2008

< Previous Next >

4.3: Court applications and orders

In this chapter

This chapter explains what court applications a parent can make if they are not satisfied with CSA's decisions or the outcome of a review of a CSA decision by the Social Security Appeals Tribunal (SSAT). This includes applications under the Child Support legislation and the *Administrative Decisions (Judicial Review) Act 1977*. This chapter also explains the orders a court can make on those applications.

It also outlines other orders that a court may make under the *Family Law Act 1975* that affect a child support assessment or the details entered in the Child Support Register.

It provides information about the way in which CSA interprets court orders including orders made under the Family Law Act which will affect a child support assessment.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 1 January 2008

< Previous Next >

3.5.6: Other common provisions in court orders and agreements

Context

The words in court orders and court-registered agreements have their ordinary meaning. Despite this, some clauses may be unclear or ambiguous. CSA will interpret common terms and provisions consistently.

Legislative reference

Sections 17 and 18 *Child Support (Registration and Collection) Act 1988*

Explanation

CSA will interpret the following common terms and provisions in the following way.

Previous orders discharged, vacated, set aside or nullified

Orders that vary previous orders are often worded in this way. In some cases, the intention of the court and therefore the date of effect of the order is unclear. This can be especially important when a sequence of orders have been made over a period of years that vary the previous orders.

Discharged

This means the whole order or specified clauses within the order are ended. The discharging order will specify a date when the discharge becomes effective, otherwise the order or clauses in the order cease to have effect from the date of the discharging order.

Vacated

The whole order or specified clauses in the order are left vacant, and are ended. The vacating order will specify a date when the order or clause vacated ceases to have effect, otherwise they will cease to have effect from the date of the vacating order.

Set aside

This is a variation which ends a clause or an order from the date the original order was made, or from a later date if specified in the setting aside order. In contrast to the above, if no date is specified the order or clauses in the order are set aside from the date of the original order.

Nullity

A declaration that an order or clause is legally void or inoperable. The order or clause is considered never to have had any effect and must be treated as if it were never made.

Orders setting a rate of child support for more than one child

A court order that sets a rate of child support for more than one child will ideally state how much is payable for each of the children. In the absence of such a statement CSA cannot apportion the amount between the children. When the court order or court-registered agreement ends in relation to one or more of the children

the Child Support Register will continue to reflect the full amount payable under that order or agreement.

Example

The order states 'that $100 per week each for the 2 children of the marriage is payable making a total of $200 per week '.
The eldest child reaches 18 years of age and the liability is reduced to $100 per week.

The order states 'that $200 per week is payable for the children of the marriage'.
There are 2 children and the eldest reaches 18 years. $200 remains payable as it is not clear how the total amount was to be apportioned between them.

Unemployment clauses

Court orders and court-registered agreements can suspend or reduce the liability when a parent is unemployed. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to try to obtain agreement about the intention of the clause. If the parents are unable to agree on the intention of the clause CSA will take the following issues into account when it interprets the court order.

For the liability to be varied when a parent becomes unemployed CSA must be able to determine the person's employment status. CSA will accept that a parent is unemployed if they receive a benefit or pension from Centrelink, in the absence of any evidence to the contrary. Where the parent does not receive benefit or pension, CSA will consider statements made by the parent and documentary evidence such as a certificate of separation.

Many court orders and agreements allow for a reduced liability during periods when a parent is 'in receipt of unemployment benefits'. A difficulty arises when a parent is not employed but is not receiving an unemployment benefit, or is receiving another type of benefit. A broad interpretation will be given to the term 'unemployment benefits'. CSA may apply such a clause where the person is receiving a Centrelink benefit or pension as a result of not being in employment (e.g. Disability Support pension or Sickness Allowance). However, if a parent is receiving benefits but their employment hasn't been terminated the parent is still employed.

A parent may be unable to work because of a work-related injury, and receive periodic compensation payments. CSA will determine if the parent is still employed by their employer. If the employment contract has been terminated CSA will accept that the person is 'unemployed' despite being in receipt of payments which may be greater than those payable to unemployed welfare beneficiaries.

A court can make an order that varies a parent's liability in a current period of unemployment, or one that applies during any period of unemployment.

Example

'The amount payable is to be reduced to $10 per week until F gains full-time employment' applies to F's current period of unemployment.

'The amount payable is to be reduced to $10 per week during periods when F is not in full-time employment' applies whenever F is unemployed after the date of the order.

Self-supporting children

Orders and agreements sometimes contain a provision providing for a reduction in child support payable if the child is self-supporting. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to obtain agreement about the intention of the clause if possible. If the parents are unable to agree on the intention of the clause CSA will interpret the clause in the following way.

CSA must be satisfied that the child is, in fact, supporting themself. CSA will not consider whether or not the child is capable of being self-supporting or should be self-supporting.

In determining whether a child is self-supporting CSA will determine the child's actual income and whether the child is paying for his or her basic living expenses without financial support from another person. Basic living expenses include accommodation, food, household utilities and transport costs. CSA will disregard social security payments the child is receiving except where the child is not living with the payee. If the child is also making lifestyle choices which would not be available without an independent source of income (for example, buying a car), the child is more likely to be self supporting.

If the child is living away from home CSA will consider whether the payee continues to have care and control of the child or whether the child is living independently from the payee and meeting their own costs. CSA will consider whether there has been a terminating event.

If the child continues to live with the payee, they will be self supporting if they pay a reasonable contribution towards household expenses including accommodation, utilities and food and groceries or if they pay board equal to this amount to the payee. If the child is living with the payee but not contributing towards those household expenses, or is only making a nominal contribution, CSA will find that the child is not self-supporting.

CSA will not attempt to obtain this information from a child under the age of 18 years and will request evidence from the parents in order to make a decision.

Children in full-time education

Orders sometimes state that they are to operate until a child ceases to be in full-time education or until they finish a particular level of education such as secondary schooling. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to try to obtain agreement about the intention of the clause. If the parents are unable to agree on the intention of the clause CSA will consider the following issues when it interprets the clause.

Tertiary education

Tertiary education involves a distinct qualification, an associate diploma, diploma or degree, rather than matriculation or vocational training. This is usually how orders for children over 18 years are worded. Associate diplomas can be undertaken at some TAFE Colleges and CSA should contact the college concerned to ascertain the level given by the college.

Secondary education

Institutions such as TAFE offer a range of courses from secondary education, vocational and pre-vocational training as well as certificate, pre-tertiary and associate diploma courses. If the parents disagree about the level of education the child is undertaking, CSA will ask the payee for information about the child's student status.

Where a child who is under 18 is attending high school, or undertaking a secondary level course at a TAFE college, CSA will accept this to be secondary education. It may be necessary to contact the TAFE college to ascertain this.

Full-time education

Where the child is at school or attending an institution that designates the child as a full-time student, CSA will generally accept that the child is in full-time education.

Period between end of secondary school and commencing tertiary education

Parents may disagree about child support in the period between a child finishing school and commencing a full-time tertiary course. CSA will accept that the child is in full-time education in the holiday period if the child has indicated an intention to continue their education (for example by applying for a place and then enrolling in a course). The holiday period extends from the day after the final day of secondary school (as early as October) to the commencement day of the next academic year (the following February or March).

A child may also apply for entry into a tertiary course but not win a place or may be offered a place but not enrol in the course. In these cases CSA will treat the child as being in full-time education until the failure to gain a place is notified or until the final date for enrolment is passed, as long as the child has indicated an intention to continue in education until that time.

A child may defer a course of study for a period. During the deferral period, the child is not enrolled in a course of full-time study. The deferral period will extend from the day the application for deferral of the course is accepted until the day the student resumes the deferred course.

In determining the child's education status CSA will not consider any income received by the child unless the court order or court-registered agreement makes this relevant.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.1: CSA Collection

In this chapter

This chapter describes when CSA will accept an application to collect child support, how CSA registers enforceable maintenance liabilities and the effect of registration.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 13 January 2004

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.2: Administrative enforcement

In this chapter

This chapter describes CSA's administrative methods of collecting child support. These are actions that CSA can take in its own right to require payment of child support.

CSA can collect child support as voluntary payments from the payer; or by intercepting money which would otherwise be payable to a payer (e.g. a tax refund, or from their employer). The involvement of a court is not required. CSA can exercise certain administrative enforcement powers by issuing a notice. However, legal requirements apply to the form and service of notices, and legal consequences flow from their use.

Each topic below describes the collection method, and the consequences and restrictions which apply to its use.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 18 August 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.3: Non-agency payments and offsetting liabilities

In this chapter

This chapter explains when CSA can apply amounts paid directly between parents or to a third party to satisfy a child support liability and also how CSA can offset child support debts between parents.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 22 July 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.4: Court enforcement

In this chapter

This chapter describes the methods available to CSA to enforce collection of child support through the courts. CSA will generally use the available administrative methods of enforcement before resorting to court action. See chapter 5.2 Administrative enforcement.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.5: Payments to payees

In this chapter

This chapter describes how and when payments of child support are made to payees. This chapter also explains when overpayments can be recovered from payees and when amounts overpaid can be refunded to payers.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 1 September 2004

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.6: Ending and reapplying for CSA collection

In this chapter

This chapter explains when CSA will cease to collect an ongoing child support liability, including arrears of child support payable under that liability. It also explains when CSA will accept the payee's application for CSA to resume collection.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.7: Non-pursuit of debts

In this chapter

This chapter describes when CSA will not take action to collect a child support debt owed by a payer or payee.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home
Part 1: About the scheme
Part 2: Child support assessments
Part 3: Orders under the Family Law Act
Part 4: Objecting, seeking a review, appealing and applying to court
Part 5: Collecting child support
Part 6: Administration
A to Z index
Current guide
Effective from 1 July 2008

4.3.7: The Administrative Decisions (Judicial Review) Act 1977

Context

A person aggrieved by certain administrative decision made under Commonwealth legislation can apply to the Federal Court, or Federal Magistrates Court for a review of that decision.

Legislative References

Administrative Decisions (Judicial Review) Act 1977

Explanation

The AD(JR) Act allows a parent to apply to the Federal Court or the Federal Magistrates Court for judicial review of most of CSA's administrative decisions. The AD(JR) Act applies to all CSA decisions under the Registration and Collection Act and all Assessment Act decisions except for those made under Part 6A of the Assessment Act (i.e. decisions on a parent's application to change a child support assessment or on a Registrar-initiated change of assessment). (See chapter 2.6)

The Federal Court or Federal Magistrate's court can transfer the proceedings in relation to CSA's decisions to the Family Court if it believes it is appropriate.

Parties to the application

CSA is the respondent to a parent's application for review under the AD(JR) Act. The court can decide to join the other parent to the proceedings if it believes this is appropriate.

The court's review

The AD(JR) Act provides that the court will review a decision by considering whether the decision-maker has properly made that decision according to law. The court cannot review the merits of the decision, by considering whether the decision was the best exercise of the decision-maker's discretion.

Decision-making according to the law

The court can conclude that a decision was not made according to law if satisfied that any of the following circumstances apply (section 5 AD(JR) Act).

- The decision was made in a way that was not procedurally fair, e.g. the decision-maker failed to provide either parent with an opportunity to comment on the information that was taken into account in a way that is adverse to them; or if the decision-maker was biased.
- The decision-maker did not follow procedures that were required by law when they made the decision.
- The person who purported to make the decision did not have the power to make the decision.
- The decision could not be made under the relevant legislation.
- The decision-maker used the decision-making power in an improper way and not for the purpose intended by the relevant legislation.
- The decision-maker made a mistake about the law that applied to the facts of the case.
- The decision was made or affected by fraud.
- There was no evidence or other material to justify the decision.
- The decision was otherwise contrary to law.

Using a decision-making power in an improper way

A decision-maker will use their power in an improper way if they

- take something into account that was not relevant to the decision;
- fail to consider something that was relevant to their decision;
- make the decision for a different purpose than the one conferred by the legislation;
- make a decision involving discretion in bad faith;
- make a decision involving discretion at the direction or request of another person,
- make a decision according to a policy without taking into account the circumstances of the case;
- make a decision that no reasonable person could have made;
- make a decision that leads to an uncertain outcome;
- abuse their power in some other way.

No evidence to support a decision

A decision will have no evidence to support it if

- the decision-maker could only make that decision if a particular matter is established and there is no material from which they could reasonably be satisfied that the matter is established; or
- the decision-maker based the decision on a particular finding of fact and that finding was wrong.

The court's power to change a decision

The court can set aside the original decision, in whole or in part, if it is satisfied that the decision was not made according to law. The court cannot replace the decision with a preferable decision. If the court sets CSA's original decision aside, it will return the matter to CSA for it to make a new decision, subject to directions, if appropriate.

Effect of application on the original decision

CSA's decision continues to have effect after a parent makes an application under the AD(JR) until the court makes a decision on that application. CSA or the other parent may take action to enforce the decision unless the court issues a stay order in relation to that decision.

Version 1.1

Issued 18 February 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.1: Authorisation and delegation

In this chapter

This chapter explains the legal basis for CSA to make decisions under Child Support legislation.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 8 January 2004

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.2: Collecting information

In this chapter

This chapter explains how CSA obtains information to administer the Child Support legislation. CSA can compel a person to provide information, to attend and answer questions and to produce documents. CSA can also gain access to employer records. However most information CSA uses is obtained from parents or third parties without compulsion.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.3: Privacy, secrecy and proof of identity

In this chapter

This chapter describes the Child Support Agency's responsibility to meet the secrecy provisions in the Registration and Collection Act and the Assessment Act, and the Information Privacy Principles in the Privacy Act 1988. It explains the proof of identity CSA will require from its customers and the circumstances when a customer representative can obtain or provide information on behalf of a CSA customer. It also explains the special measures that CSA uses to protect the personal information of certain high-risk customers.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.5

Issued 1 January 2008

< Previous Next >

6.4: Subpoenas

In this chapter

This chapter describes when CSA must provide information to a court in response to a subpoena or a notice to produce documents.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

Is a Commonwealth information order or a location order the same as a subpoena?

No. A court can make an order requiring CSA to provide information about a child's location (section 67J Family Law Act). These orders are referred to as Commonwealth information orders or location orders. The secrecy provisions in the child support also make it clear that CSA must comply with Commonwealth information orders or location orders (section 16(9) Registration and Collection Act and section 150(9) Assessment Act). (See chapter 6.3 Privacy, secrecy and proof of identity)

Version 1.2

Issued 27 June 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.5: Forwarding documents

In this chapter

This chapter describes when CSA will forward documents to a parent at the request of the other parent or a court.

Contents

WA ex-nuptial cases

The information in this chapter applies apply to WA ex-nuptial children.

Frequently asked questions

Can CSA forward documents about contact and residence of a child?

No. Even though contact and residence proceedings can affect the rate of child support payable, they are not proceedings under the Child Support legislation, or proceedings to establish or vary a stage 1 liability. However, CSA will forward these documents if a court orders it to do so.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.6: Freedom of information

In this chapter

This chapter describes the kinds of documents held by CSA and the process for access to those documents, both on an informal basis and by a formal request for access under the *Freedom of information Act 1982* (FOI Act).

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

6.7: Service of documents

In this chapter

This chapter describes how CSA serves a document upon a person.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.1

Issued 29 October 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.8: Offences and prosecution

In this chapter

This chapter describes the offence provisions contained in the Child Support legislation. It does not deal with offences under the *Crimes Act 1914* and the *Criminal Code* (e.g. forgery).

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Frequently asked questions

What is a penalty unit?

A penalty unit is defined in sec 4AA of the Crimes Act as being equal to $110.

Version 1.2

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.9: Complaints

In this chapter

This chapter outlines the processes CSA uses to deal with complaints.

CSA has a genuine commitment to service. However, it also recognises that it makes mistakes that affect the standard of its decision-making and service provision. CSA welcomes complaints from its customers. It takes appropriate action to resolve complaints and learns from its mistakes.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

6.10: Family violence

In this chapter

This chapter describes how CSA will manage child support cases where there is a risk of family violence.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.11: Compensation and waiver of debts

In this chapter

This chapter describes the circumstances in which CSA can pay compensation to customers. It explains how customers can make a claim for compensation and what they can expect from CSA. It also explains the circumstances in which a debt owed to the Commonwealth can be waived.

Contents

WA ex-nuptial cases

The information in this chapter applies to WA ex nuptial children.

Version 1.0

Issued 22 July 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.7.1: Non-pursuit of debt

Context

CSA must pursue recovery of all registered child support debts unless they are not legally recoverable; or uneconomical to pursue.

Legislative References

Section 47 *Financial Management and Accountability Act 1997*

Sections 4 and 80 *Child Support (Registration and Collection) Act 1988*

Explanation

Legal authority for CSA not to pursue a debt

CSA has no authority to release a person who owes a debt to the Commonwealth from payment of that debt. However, in limited circumstances, CSA can decide not to pursue recovery of a debt. The person would continue to owe the debt to the Commonwealth, but CSA will not take action to recover it unless the person's circumstances change.

Under the *Financial Management and Accountability Act 1997* (the FMA Act) the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (the FaHCSIA Secretary) is responsible for pursuing recovery of all debt owed to CSA, unless:

- the debt is not legally recoverable (section 47(1)(b) FMA Act), or
- it is uneconomical to pursue recovery of the debt (section 47(1)(c) FMA Act).

The FaHCSIA Secretary has delegated his powers to decide not to recover debts in these circumstances to certain CSA staff, according to the amount of the debt.

Grounds for non-pursuit

Two categories for non-pursuit of debt are allowable under the *Financial Management and Accountability Act 1997*. All debts must be pursued unless they are:

- irrecoverable at law
- uneconomical to pursue.

Irrecoverable at law

A debt may be irrecoverable at law if:

- CSA has taken all reasonable action to recover the debt, but has not been able to collect it.

Example

> The debtor is deceased and the executor of their estate has advised CSA that there are insufficient assets to meet any part of the child support liability.

- a court is likely to rule in favour of the debtor in enforcement proceedings

Example

A payer has a child support debt payable to CSA for a period when the payer and payee had reconciled, but the payee did not elect to end the child support assessment during the period the payer and payee lived together.

A debtor owes an amount that formed part of their provable debt in bankruptcy, and has now been discharged from bankruptcy. However, this does not apply where the debt was a debt for child support or spousal maintenance, which are both debts, which survive bankruptcy.

- the debtor resides in a country which does not have reciprocal maintenance arrangements with Australia, and the payer does not derive any income or hold any assets in Australia.

Example

Payer resides in China (which is not a reciprocating jurisdiction). The payer has business interests in China, but has no income or assets in Australia.

Uneconomical to pursue

A debt may be uneconomical to pursue if:

- it would cost the Commonwealth more than the amount of the debt to recover it.

Example

The debt is less than $500, unsuccessful recovery action has been taken and the debt balance has not changed for 12 months.

- the debtor has no capacity to pay the debt.

Examples

The debtor is serving a period of imprisonment and has no assets or source of income.

The debtor has been declared bankrupt and has no present or future capacity to pay.

- CSA has taken reasonable action to trace a debtor for a continuous period of at least 6 months, but their whereabouts remain unknown and CSA has not identified any income or assets belonging to the debtor.

CSA is required to maintain a register of all the debts that it has decided not to pursue. CSA will regularly review a decision not to pursue recovery of a debt to establish whether there has been a change in the debtor's circumstances that would make it appropriate to resume action to pursue the debt.

Advice to payer and payee

CSA will not advise a payer that it has made a decision not to pursue the recovery of their child support debt. The debt is still owed to CSA and will remain on the payer's account. However, CSA may inform a payer that it will take no further action to recover the debt until their circumstances indicate that they have a capacity to pay the debt. CSA will ask the liable parent to contact CSA as soon as their circumstances change.

CSA will advise the payee when it decides not to pursue recovery of a child support debt from a payer. CSA will invite the payee to advise CSA if they become aware of any change in the payer's circumstances that may make it possible for CSA to collect the debt.

Payee can object to CSA's decision

A payee can object to CSA's decision not to pursue recovery of a child support debt that has remained unpaid for at least 6 months (sections 4(1) and 80(1) of the Registration and Collection Act) (See chapter 4.1).

Version 1.1

Issued 1 January 2007

< Previous Next >

2.4.1: The basic formula

Context

CSA uses the basic formula to calculate the annual rate of child support payable under a child support assessment unless:

- a modified formula applies, or
- the assessment is varied by a departure order, (see chapter 2.7), or
- the assessment is varied by a change of assessment decision, (see chapter 2.6), or
- the assessment is varied by the provisions of a child support agreement that have effect as if they are a consent order. (See chapter 2.5, heading Effect of an agreement).

Legislative References

Division 1 of Part 5, Sections 5, 35 to 39 and 156 *Child Support (Assessment) Act 1989*

Sections 23AF and 23AG *Income Tax Assessment Act 1936*

Section 66M *Family Law Act 1975*

Section 124 *Family Court Act 1997 (WA)*

Income Tax Assessment Act 1997

Fringe Benefits Tax Assessment Act 1986

Explanation

The annual rate of child support payable in relation to a day in a child support period is calculated using the formula (section 36(1)):

Child support percentage x adjusted income amount

Child support percentage

The child support percentage is determined by the number of children for whom the payer is liable to pay child support under a child support assessment (section 37).

1	18%
2	27%
3	32%
4	34%
5	36%

Adjusted income amount

The adjusted income amount is calculated using the formula (section 36(2)):

Child support income amount - exempted income amount

The adjusted income amount cannot be less than nil.

Child support income amount

The child support income amount is the sum of a parent's taxable income for the last relevant year of income

and their supplementary amounts for the last relevant year of income.

Exempted income amount

The exempted income amount for a payer with no relevant dependent children is 110% of the annual amount of the unpartnered rate of social security pension for the child support period (section 39 (1)(a)) (see basic values table).

If the payer has a relevant dependent child the exempt income amount is 220% of the annual amount of the partnered rate of social security pension for the child support period (section 39(1)(b)) plus an amount for each child (section 39(2)) (see basic values table).

Relevant dependent child

A payer's relevant dependent child can be their child (natural, adopted or born as the result of an artificial conception procedure) or, in certain circumstances, their step-child. The payer must be the sole or principal provider of ongoing daily care for the child (this includes where the payer and their new partner are jointly caring for the child in the home that they share) or have major contact with the child (see chapter 2.2 topic levels of care).

A relevant dependant child must be under 18 years of age, and cannot be a member of a couple. However, if an assessment for a child has been extended until they finish school the child is taken to be aged 17 until a terminating event happens (section 151D(2A)). This means that where the care of the child is divided the child is still a relevant dependant for the purposes of the assessments.

A step-child is not a payer's relevant dependent child unless the payer has a duty to maintain that child by order of a court under section 66M of the Family Law Act or section 124 of the WA Family Court Act, (see chapter 4.3 Court applications, heading Orders in relation to step-children).

A child that is in the shared care of the payer and payee is not the payer's relevant dependent child. However, a modified formula applies in these cases and the exempted income of each parent is increased by an additional amount (section 48(1)(d)).

Taxable income and last relevant year of income

CSA uses a parent's taxable income for the last relevant year of income to calculate their child support assessment. The last relevant year of income for a child support period is the financial year that ended before the start of the child support period (sections 38 and 45). The parent's taxable income is as defined in the Income Tax Assessment Act.

Supplementary amount

A parent's supplementary amount for a year of income is the sum of the parent's:

- exempt foreign income - the total of the parent's income that is exempt from tax under sections 23AF and 23AG of the Income Tax Assessment Act, less the amount of losses and outgoings incurred (sections 38A(2) and 45A(2)). A parent's exempt foreign income cannot be reduced below zero.
- rental property loss - the amount by which the parent's allowable rental property deductions under the Income Tax Assessment Act (other than prescribed allowable deductions of that kind) exceed the parent's rental property income (sections 38A(4) and 45A(4)). This does not include rental income derived as part of a partnership.
- reportable fringe benefits (sections 38A(1) and 45A(1)) - the total employee's reportable fringe benefits, as defined by the Fringe Benefits Tax Assessment Act, for the year of income (section 5). Reportable fringe benefit amounts are those with a total grossed up value of at least $1,000.

If a parent has lodged a tax return CSA will use the supplementary amounts shown on that return.

Example

> M is paying child support to F for a child, A. The basic formula applies. M's taxable income for the last relevant year of income is $28,000 and there is no supplementary amount. M has no relevant dependants. M's exempted income amount is $12,315. The child support percentage for one child is 18%. The annual rate of child support (for a child support period commencing 1 January 2003) is calculated:

Annual rate of child support	= ($28,000 - $12,315) x 18% = $2,823

(The annual rate is rounded up or down to the nearest whole dollar (section 156)).

Version 1.5

Issued 1 January 2008

< Previous Next >

3.4.1: Requirement to notify CSA of new order or affecting event

Context

A payee of a registered maintenance liability must notify CSA of any new order or of any event which affects that liability. The payer can apply to have the particulars of the register changed if a new order or court registered agreement has been made, or if some event has occurred that affects the liability.

Legislative References

Sections 4, 33, 34, 35, 36 and 37 *Child Support (Registration and Collection) Act 1988*

Explanation

After CSA has registered a court order or court-registered agreement (including a parentage overpayment order), the payee of that registered maintenance liability must notify CSA when a court makes a new order or registers an agreement that affects the liability (section 33).

The payee must advise CSA if an affecting event happens (section 34). An affecting event is any event that varies the liability, otherwise affects the liability or is a terminating event for the liability (section 4). The kinds of events that would be an affecting event would depend upon the terms of the court order or court-registered agreement. See chapter 3.1 Types of orders for details of terminating events for:

- terminating events for child maintenance orders
- terminating events for spousal maintenance orders
- terminating events for court-registered agreements

The payer can apply to CSA to have the Register varied to give effect to a new court order or court-registered agreement, or to recognise the happening of an affecting event (section 35).

CSA must vary the Register on receipt of the notification by the payee or an application by the payer (section 36).

CSA can also vary a stage 1 registrable maintenance liability if it becomes aware through other means that an order has been made, or that a court has registered an agreement, or that an affecting event has happened (section 37). This allows CSA to act upon advice received from a court, or a person other than the payer or payee, where appropriate.

Version 1.1

< Previous Next >

1.6.3: Overseas orders, court-registered agreements and assessments

Context

CSA can register overseas maintenance liabilities arising in a reciprocating jurisdiction for collection, in the same way that it can register Australian court orders and child support assessments.

Legislative References

Section 4, 18A, 25, 25A, 30AA, and 152 *Child Support (Registration and Collection) Act 1988*

Regulations 4A *Child Support (Registration and Collection) Regulations 1988*

Regulations 28, 28C, 28D and 30 *Family Law Regulations 1984*

Explanation

Registrable overseas maintenance liabilities

CSA can register certain overseas child maintenance liabilities and spousal maintenance liabilities for collection.

The following are registrable overseas maintenance liabilities for a child (Sections 4(1), 18A and Regulation 4A Registration & Collection Act):

- A court order from a reciprocating jurisdiction requiring a person to pay a periodic amount for the maintenance of their child or step-child.
- An agreement registered by a court in a reciprocating jurisdiction requiring a person to pay a periodic amount for the maintenance of their child or step-child.
- A maintenance assessment issued in a reciprocating jurisdiction requiring a parent or step-parent to pay a periodic amount of maintenance for a child.
- An agency reimbursement liability (i.e. an amount that an overseas authority has paid to the carer for which it seeks reimbursement from the other parent).
- A penalty for late payment or incorrect estimate payable by a liable parent under New Zealand laws.
- Arrears of periodic amounts of child maintenance payable under an overseas court order, court-registered maintenance agreement, maintenance assessment or agency reimbursement liability.

The following are registrable overseas maintenance liabilities for a spouse (Sections 4(1), 18A Registration & Collection Act):

- A court order from a reciprocating jurisdiction requiring a person to pay a periodic amount for the maintenance of the person to whom they are or were married.
- An agreement registered by a court in a reciprocating jurisdiction requiring a person to pay a periodic amount for the maintenance of the person to whom they are or were married.
- A maintenance assessment issued in a reciprocating jurisdiction requiring a person to pay a periodic

amount for the maintenance of the person to whom they are or were married.
- Arrears of periodic amounts of spousal maintenance payable under an overseas court order, court-registered maintenance agreement or maintenance assessment.

'Periodic amount' is discussed in chapter 3.2. See 'Overseas maintenance entry liabilities' for information about non-periodic amounts.

Registering overseas maintenance liabilities for collection

Application requirements

Either parent can apply for registration of an overseas maintenance liability.

A payee can apply:

- If the payee is a resident of Australia or a non-reciprocating jurisdiction the application can be made directly to CSA (section 25(1).
- If the payee is a resident of a reciprocating jurisdiction the application must be given to CSA by the overseas authority in their country (section 25 (1A)(c)).

A payer can apply:

- If the payer is a resident of Australia the application can be made directly to CSA, provided the payee is a resident of a reciprocating jurisdiction (section 25 (1C) & (1D)).
- If the payer is a resident of a reciprocating jurisdiction the application can be made directly to CSA or given to CSA by the overseas authority in their jurisdiction (section 25 (1C) & (1D)). The payee must be a resident of Australia (section 25C).

An overseas authority can also apply for registration of a overseas maintenance liability on behalf of a payee who is a resident of a reciprocating jurisdiction (sections 18A(3)(a) and 25(1A)(d)). This occurs when the overseas authority seeks reimbursement of maintenance been paid to the payee. This is known as an **agency reimbursement liability.**

Administering a registered overseas maintenance liability

CSA must register an overseas registrable maintenance liability within 90 days of receiving the payee's application for registration (section 25(2A) Registration and Collection Act).

An application can be made to CSA for registration of an existing overseas maintenance liability, including arrears payable under the liability (section 18A (4). An application can also be made to CSA for registration of arrears only.

A registered overseas maintenance liability, including an amount in arrears under such a liability, first becomes enforceable on the day on which the Registrar received the application for the liability to be registered (sections 28(d) and (e) Registration and Collection Act).

CSA can refuse to register an overseas maintenance liability if satisfied that it is inconsistent with the relevant international maintenance arrangement (section 25(2B)Registration and Collection Act).

If CSA accepts an application for a child support assessment, and both parents are residents of Australia, any previously registered overseas maintenance liability will cease to have effect, except any arrears under the liability will remain payable (section 152(2) Assessment Act).

CSA may have already registered an overseas maintenance liability for the same payer, payee and child(ren). That previous liability ceases to have effect when CSA registers a subsequent overseas maintenance liability (section 30AA(1)). Any arrears payable under the previous liability are still payable (section 30AA(2)).

CSA can register maintenance assessments raised by an overseas authority. CSA's role in these cases is limited to collecting amounts payable under the liability using its powers under the Registration and Collection Act (including court enforcement). The overseas authority continues to administer the assessment.

Overseas maintenance entry liabilities

A payee of an overseas maintenance liability that is not a liability for a person to pay a periodic amount can apply to CSA for it to be entered into the Register (section 25A). This includes lump sum spousal or child maintenance orders, and non-periodic maintenance liabilities such as insurance, dental costs etc. If CSA enters these non-periodic liabilities in the Register they become a debt due to the applicant (payee), not the Commonwealth.

An overseas entry maintenance liability can be recovered in a court of competent jurisdiction, as if the liability were a court order made under Part VII or Part VIII of the Family Law Act. The payee can start their own enforcement proceedings, or they can ask the Attorney-General's Department to initiate proceedings on their behalf (regulation 30 Family Law Regulations).

Additional terminating event for overseas maintenance liabilities

If both the payee and payer of a registered overseas maintenance liability (section 18A) cease to be resident of Australia, the liability ends from the date that both parties ceased to be resident of Australia (section 4(1)(cb), (cc) & (cd).

Provisional overseas maintenance liabilities

An overseas authority may send CSA a provisional overseas maintenance order made in a court of their jurisdiction. CSA cannot register a provisional overseas order until an Australian court confirms it. However, an Australian court cannot confirm a provisional order if an application for a child support assessment could properly be made (regulation 28(4) Family Law Regulations). If CSA is satisfied that a parent or the overseas authority could properly make an application for a child support assessment, it will return the provisional order to the sending overseas authority. CSA will advise the overseas authority that it can accept:

- a request to register a final order made overseas;
- a request to register an overseas maintenance assessment; or
- an application for a child support assessment.

CSA will refer a copy of the provisional order to the Attorney-General's Department if it is satisfied that an application for a child support assessment could not be properly made in relation to the case. The Attorney-General's Department is responsible for making an application to an Australian court to have the provisional order confirmed. The Attorney-General's Department must serve a copy of the application upon the parent in Australia (who is the respondent to the application). The respondent can oppose the application (regulation 28 Family Law Regulations). CSA can register the confirmed provisional order, including any modifications that the Australian court may make (regulation 28(b)(3), Family Law Regulations).

US Petitions

A US Petition is not an overseas registrable maintenance liability. It is a petition (or application) for a support order filed in a court of a state or territory of the United States of America. The Attorney-General's Department can make an application to an Australian court for a maintenance order in accordance with the terms set out in a US Petition (regulation 28C Family Law Regulations). However, a court in Australia cannot make an order on a US Petition if the payer, payee or an overseas maintenance authority could make an application for a child support assessment (regulation 28D(3) Family Law Regulations). If the Attorney-General's Department receives a US Petition for parties who appear to be eligible for a child support assessment, it will refer the matter to CSA. CSA will advise the overseas authority that it can accept:

- a request to register a final order made overseas;
- a request to register an overseas maintenance assessment; or
- an application for a child support assessment.

Version 1.4

Issued 27 July 2007

< Previous Next >

2.5.2: Application for acceptance of a child support agreement

Context

Once parents make a child support agreement, either parent can apply to CSA for acceptance of the agreement.

Legislative References

Sections 88 and 89 *Child Support (Assessment) Act 1989*

Explanation

The payer and payee are both entitled to apply to CSA for acceptance of a child support agreement. An application for acceptance of a child support agreement does not need to be made in writing (See chapter 6.2).

If the payee applies for acceptance, they must state whether or not they are receiving, or claiming, Family Tax Benefit, Part A (FTB Part A) at more than the base rate on the day the application is made.

Version 1.1

Issued 18 February 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.5: Change of assessment process

Context

The Assessment Act sets out the procedure CSA must follow when considering a payer or payee's change of assessment application.

Legislative References

Sections 5, 75, 76, 98B, 98D, 98G, 98H, 98S, 98T, 98U, 150A and 161 *Child Support (Assessment) Act 1989*

Section 8 *Electronic Transactions Act 1999*

Schedule1 *Electronic Transactions Regulations 2000*

Section 4 Family Law Act 1975

Regulation 12A Family Law Regulations 1984

Explanation

Change of assessment application must be in writing

A person cannot apply for a change of assessment by phone. CSA requires that a change of assessment application be made in writing on the appropriate form (section 98D and 150A). The form (Your Application: changing your child support assessment in special circumstances) is available from CSA offices or on CSA's website at www.csa.gov.au. The form can be lodged by mail, in person or by facsimile.

In order to make a valid change of assessment application, the person must complete and sign the form. If the applicant is a parent of the child for whom child support is payable, he or she must also complete the financial section of the application form.

The form asks the applicant to identify the period for which a change is sought. CSA has limited powers to make a retrospective change of assessment decision.

Parties to a change of assessment

The parties to a change of assessment application are the payer and the payee in the case (section 98B(2)).

Copy of application to the other parent

When CSA receives a change of assessment application from a payer or payee, it must send a copy of the application and any documents that accompanied the application to the other parent in the case (section 98G). However, CSA is not required to send a copy of the application or supporting documents to the other parent if it decides to refuse the application without a conference (section 98G(1)).

Right to respond to application

CSA must give the other parent an opportunity to respond to the application (section 98G(2)). CSA does this by sending the other parent (the respondent) a form (Response - changing your child support assessment in special circumstances) when it forwards the application to them. However, CSA is not required to give the other parent an opportunity to respond to an application if it decides to refuse to change the assessment (section 98G(1)).

If the respondent completes the response form, CSA must send a copy of that response and any documents that accompanied it to the applicant (section 98G(3)).

Each parent entitled to a conference

CSA must give each parent an opportunity to have a conference with the Senior Case Officer (SCO) making a decision on the application for a change of assessment (section 98H). However, CSA can decide to refuse to change the assessment without giving either parent a conference (section 98G(1)).

CSA will offer the applicant and respondent a personal or telephone conference. This can be a joint conference with the other parent, if both parents agree (section 98H(3)). CSA can also conduct separate conferences for each parent, either personally, or by telephone.

Unlike a court hearing, the CSA cannot take evidence under oath, or cross examine a parent about the evidence they give at conference, or in their application.

Neither parent can have a representative appear for them at their conference (section 98H(5)).

CSA not obliged to conduct investigations

CSA can make a change of assessment decision on the basis of the application, the other parent's response and any supporting documents that the parents provided (section 98H(1)(a))

CSA can conduct further enquiries, but is not obliged to do so (section 98H(1)(b)). If CSA requires further information from either parent, or from third parties, it can issue a notice requiring a person to provide that information (section 161).

The prescribed change of assessment application form requests an applicant to provide documents in support of their application. The response form also requests supporting documentation. The SCO will examine and weigh the evidence presented by the parents, which includes their written and oral statements, as well as the supporting documents. The SCO may request the applicant or respondent to provide further information, or documents before making a decision on the application.

CSA will require a person to provide evidence in support of a claim that they cannot work, or have a reduced to capacity to work, because of a medical condition. The usual acceptable form of medical evidence is by way of a written report or medical certificate from a registered medical practitioner. The certificate or report must identify the person's medical condition, and state the manner and the period for which that condition will affect the person's capacity to work. CSA may also require medical evidence of a child's special needs; or of the medical condition of a person for whom the applicant provides care, or has a duty to maintain

Procedural fairness

CSA must deal with a change of assessment application in a way that is procedurally fair. A decision-maker must ensure that a person is aware of any adverse information and that they have an opportunity to be heard and make submissions in support of their case. In addition to providing each parent with a copy of the other parent's response or application and supporting documents, CSA will also advise each parent of any additional information that it intends taking into account in a way that is adverse to them, and invite them to comment upon that information. This would include information provided by the other parent at a separate conference, or by a third party after the conference.

Agreements made during a change of assessment

Parents can make an agreement while CSA is considering a change of assessment application (section 98T). CSA must accept the agreement if it is satisfied that it is a child support agreement (section 98U(1)). However, if the payee receives an income-tested pension, allowance or benefit, CSA can only accept a child support agreement if it is satisfied that it would be just and equitable and otherwise proper to do so. CSA is not required to forward a copy of an agreement made during a change of assessment process to Centrelink for its approval.

Income-tested pension, allowance or benefit

The following payments are income-tested pensions, allowances or benefits (section 5 Assessment Act, section 4(1) Family Law Act and regulation 12A Family Law Regulations).

- A service pension from the Department of Veteran's Affairs.
- All social security payments (not just those payments subject to an income test) except for the base rate of Family Tax Benefit Part A, Mobility Allowance and disaster relief payments.
- A means-tested Abstudy allowance.
- A means-tested boarding allowance under the Assistance for Isolated Children Scheme.
- A New Enterprise Incentive Scheme payment
- AUSTUDY
- Formal training assistance paid under a Labour Market Program (administered by the Department of Employment, Workplace Relations and Small Business)

Further information about the eligibility criteria and rates of these payments can be found in the 'Guide to Australian Government Payments Booklet', available from Centrelink's website: http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm

CSA must give written notice of the decision

CSA must give the parents written reasons for the decision to change an assessment, including the reasons for establishing that special circumstances existed in the case (section 98S(4)). This allows parents to have a clear understanding of the meaning and effect of the decision. CSA will also document its reasons for the type and duration of the decision in the notice of decision. CSA must also give the parties written notice of their right to object to CSA's decision, and to apply to a court for a change of assessment.

If CSA fails to give written reasons to either parent this does not affect the validity of the decision (section 98S(5)).

CSA must also amend the administrative assessment to give effect to the change of assessment decision and give the payer and payee a written notice of the assessment (sections 75 and 76). The assessment notice must include, or be accompanied by, information about the payer and payee's right to object to CSA's decision, and to apply to the Social Security Appeals Tribunal if they are aggrieved by CSA's decision on the objection (section 76(3)).

If CSA refuses to make a change to the assessment, it must also provide the payer and payee with written reasons for that decision.

Version 1.4

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.8.5: Applying for an assessment to continue after a child turns 18

Context

A payee can apply to extend a child support assessment until the end of the school year if the child will turn 18 during that year and is still in full-time secondary education.

From 1 January 2008, a parent can apply to have a relevant dependent child taken into account until the end of the school year if the relevant dependent child will turn 18 during that year and is still in full-time secondary education.

Legislative References

Sections 5, 151B, 151C, 151D and 151E *Child Support (Assessment) Act 1989*

Section 66E *Family Law Act 1975*

Explanation

How to make an application for an assessment to continue

A carer can apply to extend a child support assessment (an assessment or agreement) until the end of the school year if the child will turn 18 during the year and is in full-time secondary education (section 151B). A parent can apply to have a relevant dependent child taken into account in any relevant administrative assessment until the last day of the secondary school year in which that relevant dependent child turns 18.

An application (made orally or in writing) should include:

- the name of the child,
- the name of the school or college,
- whether the child receives full-time secondary education, and
- the last day of secondary education for the year, and
- if the application relates to an agreement, the application must be in writing and signed by both parents. Note: a relevant dependent can be taken into account in any relevant administrative assessment only (section151B(1A)).

Last day of secondary education for the year

The last day of secondary education is the later of the following:

- the last day of classes or
- the last day of the exam period,

for the year the child or relevant dependant child is in, at the school the child attends.

Example

A attends Smithfield School in Year 12. The last day of classes for Year 12 at Smithfield School is 15 November and the last day of the exam period for year 12 at Smithfield School is 10 December. The assessment should continue until 10 December.

Most Australian secondary schools have an academic year that is contained within a calendar year. CSA can continue a child support assessment for a child or take into account a relevant dependant child attending one of these schools up to the last day of the school year in which the child turns 18.

Some secondary schools have an academic year that spans two calendar years (eg August to May). CSA

can continue a child support assessment for a child or take into account a relevant dependant child attending these schools up to the last day of the calendar year in which the child or relevant dependant child turns 18.

How CSA will make a decision

CSA must accept the application (section 151C) if:

- the child or relevant dependant child has turned 17, and
- an assessment or child support agreement is in force, or is likely to be in force, on the day before the child turns 18, and
- the child or relevant dependant child is likely to be in full-time education on their 18th birthday, and
- the child's or relevant dependant child 18th birthday will be on or before the end of the secondary school year, and
- the application is made before the child's or relevant dependant child's 18th birthday (or there are exceptional circumstances justifying a late application see below).

'Secondary school' means a school, TAFE college, or any other educational institution, which provides full-time secondary education (section 5). A school or college can determine the 'last day' of 'full-time secondary education' for that calendar year (section 5).

The factors CSA will consider in deciding whether there were 'exceptional circumstances' that justify accepting a late application are whether:

- Serious health problems hindered lodgement. (Written confirmation from a health practitioner will be required).
- An application for assessment has been made but not accepted before the child turns 18, and it was unclear whether the child would be in secondary full-time education.
- The payee was under pressure not to apply. (Evidence from a person fully aware of the nature and details of the circumstances, e.g. a social worker or police officer, will be required.)
- Severe distress or hardship (e.g. caused by a disaster such as fire or flood) delayed lodgement.
- Communication difficulties led to an inability to access information. (A result of geographical location, cultural issues, literacy, language difficulties, etc.)

Examples

An agreement is to continue until 30 June 2002. The child, A, turns 18 on 11 July 2002. An application for continuation of the agreement cannot be accepted because the agreement will not be in force on the day before A turns 18. However, if there will be an assessment in place after the agreement ends an application for continuation of that assessment can be made.

An application to continue an assessment for a child, B, is granted. B's parents then enter into an agreement before B turns 18. The agreement has effect but does not continue after B turns 18. An assessment continues. For the agreement to continue B's parents would have to sign a new application for continuation of the agreement.

CSA accepts an application to continue an agreement for child support for C. The new agreement won't continue after C turns 18 unless C's parents sign a new application for continuation of the later agreement.

A liable parent refuses to sign an application for an agreement for child support for D to continue after D turns 18. CSA cannot continue the agreement. However, if there was a formula assessment in place before CSA accepted the agreement, a formula assessment will continue after the child turns 18.

The consequences of the decision

If CSA refuses an application, it must advise the applicant in writing (section 151C)). It is CSA policy to notify both parents where the payee has applied to continue an agreement. They can object to the particulars of the assessment.

If CSA accepts the application:

- CSA will advise both parents in writing. Either parent can object to the particulars of the assessment

(sections 151C (4) and (5)).

- There is no terminating event when the child turns 18 (section 151D). A terminating event will happen on:
  - the last day of secondary education in that year, or
  - if the child finishes earlier, the day the child ceases to be in full-time secondary education.
- The child is taken to be aged 17 for the purposes of applying Part 5 of the Act until a terminating event happens (section 151D(2A)). This means that where the care of the child is divided (Subdivision E) the child is still a relevant dependant for the purposes of the assessments.
- The provisions of the Act apply to allow the parents to lodge estimates, apply for a change of assessment, etc. However, an application for assessment or an agreement can only be made for a child who is under 18. An agreement cannot be varied once a child is over 18.

If a court has ordered the payer to pay child support for a child over 18 (See chapter 3.1) it will not be necessary to apply for the assessment for that child to continue. However, if an application to continue an assessment has been accepted a court should not make an order for the period where the assessment is in force (section 66E Family Law Act).

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

4.3.2: Applications and orders about decisions under the Assessment Act

Context

A parent may apply to a court for a range of court orders about child support assessments and decisions made under the Assessment Act.

Legislative References

Part 7 *Child Support (Assessment) Act 1989*

Parts VIII, VIIIA and VIIIB *Child Support (Registration and Collection) Act 1988*

Division 4.2.5, Rule 4.23 *Family Law Rules 2004*

Explanation

The Assessment Act allows parents to apply directly to a court with family law jurisdiction for a range of orders. In other cases, a parent must use CSA's objections process and seek a review of the objection decision by the Social Security Appeals Tribunal before they can appeal to a court.

The parties to court proceedings under the Assessment Act are the payer and payee. However, CSA must be served with a copy of any application or appeal (Division 4.2.5, Rule 4.23, *Family Law Rules 2004*). CSA may intervene in any court proceedings under the Assessment Act (section 145). If CSA intervenes, it is taken to be a party and has all the rights, duties and obligations of a party to the proceedings.

Parents can make the following court applications under the Assessment Act.

- A payee can apply for a declaration that they are entitled to an administrative assessment after CSA refuses their application because of lack of proof of parentage (section 106A);
- A liable parent can apply for a declaration that they are entitled to an administrative assessment after CSA refuses their application because of lack of proof of parentage (section 106B);
- A payer can apply for a declaration that the payee is not entitled to an assessment of child support payable by them because the payer is not a parent of the child (section 107);
- A liable parent can apply for a declaration that they are not entitled to an assessment of child support payable by them because they are not a parent of the child (section 107A);
- An application for a change to a child support assessment because of special circumstances (section 116), where the parents have other family law matters in the court or where CSA has made a decision, or an objection decision, or the SSAT has made a decision, that the matters are too complex for a decision under Part 6A of the Assessment Act;
- An application for leave for CSA or a court to make a change of assessment decision in relation to an administrative assessment for a period that is more than eighteen months ago (sections 111 and 112);
- An application for an order for child support to be provided in a form other than periodic amounts (section 123);
- An application to have a court set aside a child support agreement (section 136);
- An application for an urgent maintenance order (section 139); and
- An order that a payee refunds an amount of money paid as child support where no liability to pay child support existed (section 143).

A parent can apply for a stay order under section 111C of the Registration and Collection Act pending CSA's decision on a change of assessment application, or pending court proceedings under the Assessment

Act.Parents can also appeal to a court, on a question of law, if they are dissatisfied with a decision of the SSAT in relation to a decision under the Assessment Act. See Chapter 4.2.5 The SSAT review process.

Declaration that a carer parent (s106A) or a liable parent (s106B) is entitled to a child support assessment

If CSA refuses a carer parent or liable parent's application for a child support assessment, and one of the reasons was that CSA could not be satisfied that the person named was a parent of the child, they can apply to a court for a declaration that they are entitled to an assessment of child support. The person that the payee named as the payer is the respondent to the payee's court application and the person that the payer named as the payee is the respondent to the payer's court application. CSA is not a party to the court application unless it decides to intervene in the proceedings.

Effect of a section 106A declaration

If the court makes a declaration under section 106A or section 106B and the only reason for refusal of the application for child support was the lack of proof of parentage, CSA is taken to have accepted the application for an administrative assessment with effect from the date that CSA (or Centrelink) originally received the application. If there were other reasons for refusal of the application CSA has to reconsider the application.

A court may make a section 106A or a section 106B declaration in a case where CSA has refused more than one child support application. CSA will establish which child support application is cited in the court application. CSA will examine the court application if this is not apparent from the declaration. CSA's administrative assessment will start from the date that CSA (or Centrelink) received the child support application cited in the court application.

Declaration of parentage - section 106A declaration or section 106B declaration

CSA will not accept a declaration that is not clearly made under section 106A or section 106B. The court order must state that it is made under section 106A or section 106B and/or that the applicant is entitled to an assessment of child support. It is not sufficient for the court to declare that a person is the father of the child. However, an order, such as a parentage order under section 69VA of the Family Law Act can be used as a form of proof of parentage for section 29(2)(c) of the Assessment Act. See 2.2.4 Parentage and 4.3.4 Family Law Act orders affecting a child support assessment.

Declaration that a carer parent (section 107) or liable parent (section 107A) is not entitled to a child support assessment

A payer may apply to a court for a declaration that the payee is not entitled to an assessment of child support payable by them if they believe that they are not a parent of the child concerned. The payee is the respondent to the payer's court application. CSA is not a party to the court application unless it decides to intervene in the proceedings.

A payer cannot apply for a declaration under section 107 or section 107A if a court has already declared under section 106A or section 106B (see above) that the applicant is entitled to a child support assessment (sub-section 107(1A) and sub-section 107A(2)).

Payments of child support pending the application

Where child support is collected by CSA it will continue to collect child support from a payer who makes an application to a court for a declaration under section 107, but will suspend the payment of child support to the payee for that particular child until the court deals with the application. (See chapter 5.5, heading Suspending payments to payees)

A payer can also apply to the court for a stay order.

Effect of a section 107 or section 107A declaration

If a court makes a declaration under section 107 or section 107A, CSA is taken never to have accepted the payee's application for child support for that child. CSA will end the administrative assessment for that particular child from the start date.

CSA will refund to the payer any payments held because of a suspension determination (See chapter 5.5,

heading Suspending payments to payees). CSA will not repay any amounts already disbursed to the payee.

Section 107(6) and section 107A(7) of the Assessment Act says that the court must consider making an order under section 143 of the Assessment Act for recovery of any overpaid child support as soon as practicable after making a declaration under section 107 or section 107A of the Assessment Act. See Chapter 3.2.6 Parentage overpayment orders.

Application for leave to make a change of assessment decision in relation to an administrative assessment for a period that is more than eighteen months ago (sections 111 and 112)

A court may grant leave under section 112 for:

- CSA to make a retrospective change of assessment decision; or
- a court to make a retrospective departure decision under section 116;

which would change the assessment of child support payable for a day that is more than eighteen months before the date upon which an application for leave was made to the court under section 111. The court cannot grant leave to change an assessment for a day that is more than seven years before the date of the application under section 111 (section 112(7)(a)).

Application by the payer or payee for leave

The payer or payee can apply to the court for leave if they wish to make a change of assessment application to CSA in relation to an administrative assessment for a period that is more than eighteen months ago (section 111(1)(a)). See Chapter 2.6.5 for more information on the change of assessment process.

The court must take into account the matters listed in section 111(4) and may have regard to any other relevant matter when deciding whether to grant leave (section 111(5)).

If the court grants leave, it will make an order specifying the period for which the court or CSA may change the assessment (section 111(6)). However, the order does not require the CSA or the court to make a change for the specified period (section 111(8)).

If the court considers that it would be in the interests of the parties for the court to deal with the application for a change of assessment, rather than have a parent apply to the CSA for a change of assessment, the applicant for leave is taken to have made an application to the court under section 116.

The parties to the application are the payer and payee (section 112(2)), although CSA can choose to intervene in the proceedings (section 145).

Application by CSA for leave

CSA can apply to the court for leave to make a CSA-initiated change of assessment decision in relation to an administrative assessment for a period that is more than eighteen months ago (section 111(3)).

If CSA applies to the court for leave, the parties to the application are the payer, the payee and CSA (section 111(4)).

When dealing with an application from CSA for leave, the court must take into account the same matters that that it considers when it deals with an application from the payer or payee. The types of orders the court can make are the same, regardless of who makes the application for leave.

Application for a change to a child support assessment in special circumstances (section 116)

A parent can apply for a change to their child support assessment if one or more of a specified range of special circumstances apply to them, their children or the other parent. These special circumstances are the same as the reasons for an application to CSA for a change of assessment (COA).

When can a parent apply to court for a change of assessment?

In most cases, a parent must first apply to CSA for a change of assessment. A parent may apply direct to a court for a change to their child support assessment in the following circumstances.

- They want the court to reduce their minimum child support assessment to nil; or
- They have another matter before the court and the court is satisfied that it should consider the matters together; or

- CSA has, under section 98E or 98R, refused to make a determination under Part 6A of the Assessment Act as the issues raised are too complex and an objection to that decision has been disallowed; or
- In making a decision on an objection to a determination under Part 6A of the Assessment Act, the CSA has, under section 98E or 98R, refused to make a determination as the issues raised are too complex; or
- The SSAT has, under section 98E or 98R, refused to make a determination under Part 6A as the issues raised are too complex.

Parties to the court application

The parties to the application are the payer and payee in the case. CSA is not a party unless it decides to intervene in the court proceedings (section 145).

When dealing with the application, the court does not consider whether CSA's decision on the application to change the assessment and objection was correct. The court will decide whether there is a reason to change the administrative assessment made in accordance with CSA's decision and, if so, whether it is fair and proper to do so.

Payments of child support pending the application

CSA's assessment of child support continues to apply while the court deals with a parent's application. CSA will continue to collect child support payable under the assessment.

A parent can apply to the court for a stay order.

Application for child support to be paid in a form other than periodic amounts (section 123)

A parent may apply for child support to be paid otherwise than by periodic payment. Commonly, a payee will apply for an order requiring the payer to make payments of school fees or to pay child support in a lump sum in substitution for the periodic liability.

How the order affects the child support assessment

When a court makes an order for child support to be in a form other than periodic amounts, it should also specify how the payment is to be credited against any ongoing child support assessment.

The order may state that:

- payments under the order will be credited against the ongoing child support assessment for a specified period
- payments under the order will reduce the ongoing child support assessment by a certain percentage or a specific amount
- payments under the order will not affect the ongoing child support assessment.

If the court does not specify how the order will affect the ongoing liability, this does not mean that the order is invalid. CSA will assume that the ongoing liability will continue in accordance with the assessment and make future assessments as required.

Payees who receive Centrelink payments

If the payee receives a Centrelink payment they may apply for the assessment not to be reduced by more than 25% because of the court order. CSA must work out whether the parent would continue to receive the payment if the assessment was reduced by no more than 25%. If so, the Registrar will amend the assessment so it is reduced by only 25%.

An application to have a court set aside an agreement (section 136).

A parent can apply to a court to have a child support agreement set aside if they entered into the agreement because of fraud or undue influence. The parties to the application are the payer and payee in the case. CSA is not a party to the appeal unless it decides to intervene in the court proceedings (section 145).

If a court sets aside the agreement it can make consequential orders to preserve or adjust the rights of the child or the parents.

Urgent maintenance orders (section 139)

If a carer has made an application for a child support assessment they can also apply to a court for urgent financial assistance from the person from whom they seek child support. The court can make an order for payment of a periodic or other amount even if CSA has refused to accept the application.

An urgent maintenance order has effect for the period specified in the order. However, if a child support application is later accepted or refused the urgent maintenance order ceases to have effect once:

- child support becomes payable for the child under an administrative assessment (the liability under the urgent maintenance order will end from the start date of liability of the assessment); or
- CSA's decision to refuse an application for assessment becomes final because the period within which an application could be made to a court under section 106A or section 106B, or to the Social Security Appeals Tribunal, or the period within which an appeal could be made to a court, has ended and an application has not been made to a court or the SSAT; or
- the decision of a court or the SSAT that the person was not entitled to an administrative assessment becomes final.

Stay orders pending a court application

A parent can apply to a court for an order under section 111C of the Registration and Collection Act that stays or otherwise affects the operation of the Assessment Act or the Registration and Collection Act until the outcome of court proceedings.

If the court grants the application and makes a stay order the assessment will be amended to give effect to the order.

Stay orders pending a change of assessment decision

A parent can apply to a court for an order under section 111C of the Registration and Collection Act staying or otherwise affecting the operation of the Assessment Act or the Registration and Collection Act until CSA has made a decision on an application to change their child support assessment. Once CSA has made its decision on the application, the stay order will cease to have effect. (See 4.3.6 Applications, appeals and court orders under the Registration and Collection Act for information about stay orders that can be made whilst any objection is considered or an SSAT review or court appeal is in progress.)

An order that a payee refunds an amount of money paid as child support where no liability to pay child support existed (section 143)

Section 143 of the Child Support (Assessment) Act 1989 (the Assessment Act) gives a court discretion to make an order for recovery of an overpayment of a child support assessment. The court may make such orders as it considers just and equitable to give effect to, or to adjust, the rights of the payer and payee concerned. More information about this kind of order is contained in chapter 3.2.6 Parentage overpayment orders.

Other Powers of the Court

A court may dismiss a proceeding under the Assessment Act if it is satisfied that the proceeding is frivolous or vexatious (section 143B).

Version 1.5

Issued 1 January 2008

< Previous Next >

2.5.1: What is a child support agreement?

Context

The Assessment Act sets out the requirements for a child support agreement.

Legislative References

Sections 12(4), Part 6 and Part 7 *Child Support (Assessment) Act 1989*

Explanation

The Child Support legislation allows parents to reach agreement on the amount of child support to be paid. A child support agreement has to meet the requirements of the legislation and has to include matters that can be dealt with in a child support agreement. Once parents have made a child support agreement, either parent can apply to CSA to have it accepted.

Children for whom child support agreements can be made

People who can be parties to a child support agreement

What can be in a child support agreement?

Other requirements of an agreement

Agreements and notations

Children for whom child support agreements can be made

A child support agreement must be in relation to a child for whom an application for assessment can be made. A child support agreement can also deal with other children, but CSA will disregard those children for the purposes of the assessment (section 82).

People who can be parties to a child support agreement

A child support agreement must be between a person who is eligible to apply as a carer for an administrative assessment on the day the agreement is made and a person who is a parent of the child as well as a resident of Australia on the day the agreement is made. Other people can also be a party to an agreement, but CSA will disregard those people for the purposes of the assessment (section 83).

CSA is not required to conduct any investigations or make any enquiries before making a decision on an agreement (section 91). A statement that a person is a parent, or is resident of Australia, will generally be accepted at face value.

What can be in a child support agreement?

A child support agreement can only be made in relation to specific matters listed in the Assessment Act.

An agreement must contain at least one of the following:

- provisions under which a parent is to pay child support for a child to another person in the form of periodic amounts paid to the other person;
- provisions varying the rate at which a parent is already liable to pay child support for a child to another person in the form of periodic amounts paid to the other person;
- provisions agreeing on any other matter that may be included in an order made by a court under Division 4 of Part 7 (See chapter 4.3, heading Application for a change to a child support assessment in special circumstances (section 123));

- provisions under which a parent is to provide child support for a child to another person otherwise than in the form of periodic amounts paid to the other person;
- provisions under which a parent's liability to pay or provide child support for a child to another person is to end from a specified day.

CSA will disregard any other provisions in making an assessment (section 84(5)). A document that forms a parenting plan, maintenance agreement, or financial agreement, under the Family Law Act can also be an agreement for child support purposes if it contains at least one of the above types of provisions and complies with the other necessary requirements (section 85(7)).

A single agreement can contain different provisions for different child support periods or different parts of child support periods (section 85(4)).

Periodic amounts to be paid to the other person

An agreement can provide for periodic amounts (regular amounts payable on a regular basis) to be paid to the other parent.

Payments are made to a payee if the agreement specifies making payments:

- to the payee directly,
- to their bank account, or
- to a third party acting for the payee, such as a solicitor or trustee.

A provision that requires the payer to make payments to a third party on behalf of the payee is not a provision for a periodic amount to be paid to the other parent. A provision of this kind provides for child support in a form other than periodic amounts paid to the other parent (see example below).

Child support in a form other than periodic amounts paid to the other parent

Where an agreement provides for child support to be paid otherwise than in the form of periodic amounts to the other parent it must state:

- whether the child support is to be credited against the liable parent's liability under an administrative assessment, and if so,
- the annual value of the child support that is to be credited or the percentage of the annual rate of the child support liability under the assessment that is to be credited (sections 84(2) and (3)).

Example

> M agrees to pay school fees for C of $5000 per year. The fees are payable to XYZ College. M's annual rate of child support is to be reduced by $2500.

If an agreement does not specify how the agreed child support will be credited the child support under the agreement is be treated as being in addition to any child support liability under an assessment (section 84(8)).

A provision to end a child support liability

A child support liability, whether by agreement or formula assessment, can be ended by a child support agreement which provides for a liability to end from a specified day. The end date can be express or implied.

When the specified day arrives CSA will end the assessment from that day (a 'terminating event' section 12(4)). (See Ending agreements)

Other requirements of a child support agreement

A child support agreement must be in writing, and signed by both parents (section 85).

The parents can sign the same child support agreement, or each sign separate copies of a child support agreement. Where the parents each sign separate copies, the terms of each copy must be identical.

A child support agreement does not need to have been made in Australia (section 86).

If an agreement deals with more than one child, CSA will treat it as if it contains separate agreements for each of the children (section 87(1)).

If an agreement provides that child support is to be paid by both parents, CSA will treat it as if it contains separate agreements by each of the parents (section 87(2)).

Alterations and amendments

Parents must sign identical documents to make a valid agreement. Any alterations must be initialled by both parents. If an alteration is not initialled, or is only initialled by one parent, CSA will contact the parents to confirm if the alteration was made before the agreement was signed. If so, the altered agreement is valid.

If both parents want the alteration to an agreement to have effect but it was made after one, or both of them, signed the document, whoever signed before the alteration must sign again (and also initial any change).

If either parent doesn't want the alteration to have effect CSA must decide whether they signed an identical document. If both parents signed an identical document before the alteration was made CSA can accept the original agreement without taking account of the alteration.

If the alteration was made after the agreement was signed by one parent but before it was signed by the other, the parents did not sign the same document and there is no agreement between them.

Agreements and notations

An order for a change to the assessment made by consent under Part 7 of the Assessment Act can sometimes contain notations, notes or annotations to draw attention to actions the parents have taken or will take in the future. Notations are not orders and cannot be registered or vary an assessment. However, they can form a child support agreement if:

- they are signed by both parents, and
- the wording of the notation expresses an agreement that child support of a kind listed in section 84 is payable to the other parent.

A notation that says the parents intend to make a child support agreement is not a child support agreement.

Example

A notation that says 'the parents intend to enter into a child support agreement whereby M will meet all the costs of schooling for A and B in lieu of paying child support to F' is not a child support agreement, even if M and F both sign it.

A notation that says 'the parents agree that M will meet all the costs of schooling for A and B in lieu of paying child support to F' can be a child support agreement if M and F both sign it.

Version 1.1

Issued 18 February 2003

< Previous Next >

2.5.5: Varying or ending a child support agreement

Context

Child support agreements are binding on parents. There are only a few specific ways to vary an agreement.

Legislative References

Sections 97 and 98 *Child Support (Assessment) Act 1989*

Explanation

Varying a child support agreement

A child support agreement may be varied by:

- a subsequent agreement that is accepted by CSA (section 97); or
- a court. Where an agreement has been registered in a court the provisions may be discharged, suspended, revived or varied by the court in the same manner as the court could discharge, suspend, revive or vary a court order of that kind (section 98).

A court can set aside a child support agreement if the agreement was obtained by fraud or undue influence. (See chapter 4.3, heading An application to have a court set aside an agreement (section 136))

Ending a child support agreement

A child support agreement can be ended by a later child support agreement which provides for the liability under the earlier agreement to end. If an end date isn't specified CSA will end the earlier agreement from the date of the later agreement.

Where a child support assessment existed immediately prior to the agreement and was modified by the agreement, the child support assessment continues when the agreement ends. CSA will assess the liability in accordance with the relevant formula, including reinstating a change of assessment decision that existed prior to the agreement.

Example

> M and F have a child support assessment. CSA makes a change of assessment decision for the period 1 July 1997 to 30 June 2000. On 1 December 1999 CSA accepts M and F's child support agreement which varies the rate of child support for the period 1 December 1998 to 30 November 1999. The child support assessment continues after the agreement ends on 30 November 1999, and the amount payable from 1 December 1999 is as provided by the change of assessment decision.

If no child support assessment was in force immediately before the agreement, the end of the agreement is a terminating event (section 12(4)).

Example

> A child support agreement provides that 'For the next 3 years M agrees to pay child support of $200 per month to F for C'. M and F had no child support assessment when M applied to CSA for acceptance of the agreement. M's liability will end 3 years after the date of agreement.

If a liability ends it does not prevent either parent reapplying for an administrative assessment or for the acceptance of another agreement.

Terminating events and agreements

An agreement does not cease to be in force when a terminating event occurs (there is no corresponding provision to section 142 of the Assessment Act which says that a court order ceases to be in force when a terminating event occurs). If a carer parent later reapplies for an assessment the assessment will be made using the provisions of Part 5 of the Assessment Act as they are modified by the agreement.

If an agreement covers more than one child, and there is a terminating event for one of the children, CSA must amend the assessment to give effect to the terminating event.

- If the agreement specifies the amount payable for each child, CSA will amend the assessment so that it reflects the agreed amount for the remaining children.
- If the agreement simply nominates a single amount for all of the children, CSA cannot apportion the amount between the children. CSA's assessment will continue to reflect the full amount payable under the agreement. However, the parents can make a new agreement to deal with their changed circumstances.

Version 1.1

Issued 18 February 2003

< Previous Next >

2.6.14: Reason 8

Context

A payer or payee can apply for a change of assessment in special circumstances if the child support assessment is unfair because of the income, property, financial resources or earning capacity of one or both parents of the child(ren) for whom child support is payable.

Legislative References

Sections 3(2), 66, 98E, 98C, 98S, 117(2)(c)(i) and 117(4) to 117(9) *Child Support (Assessment) Act 1989*

Fringe Benefits Tax Assessment Act 1986 (FBTAA)

Income Tax Assessment Act 1936 (ITAA)

A New Tax System (Fringe Benefits Reporting) Act 1999 (Fringe Benefits Reporting Act)

Explanation

There may be a reason for changing the assessment if, in the special circumstances of the case, the assessment of child support results in an unjust and inequitable level of financial support to be provided by the payer for the child because of either parent's;

- income, property or financial resources (section 117(2)(c)(ia)); or
- earning capacity (section 117(2)(c)(ib)).

The circumstances in which CSA (or a court) can take into account a parent's earning capacity have been limited from 1 July 2006.

Both the payer and payee can apply for a change of assessment using this reason. CSA can also initiate a change of assessment using this reason.

'Special circumstances'

Additional income, property or financial resources

Unfair or 'unjust and inequitable' assessment based on taxable income

Asset rich but income poor

Low income from a family business

Alienation of income and a 'corporate veil'

Self employment and business expenses

Salary packaging, fringe benefits and Defence Force benefits and allowances

Lump sum payments received by a parent

Social security payments to the payer or payee

A parent's earning capacity

'Special circumstances'

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or

out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

A child support assessment is generally calculated using the parent's most recent taxable income. CSA will be satisfied that there are special circumstances if a parent's current income is not adequately reflected in the child support assessment (whether it is more or less than the income used).

CSA can also be satisfied that there are special circumstances if one parent has substantial property or financial resources that have not been properly taken into account in the child support assessment (*Ross and McDermott (1998) FLC 98-003*).

Although a child support assessment is calculated by applying a formula to a parent's child support income amount (based on his or her taxable income), CSA can look beyond the parent's taxable income when considering an application for a change of assessment. Income, earning capacity, property and financial resources which do not necessarily form part of a parent's taxable income can be added to or excluded from a child support assessment (*Carey and Carey (1994) FLC 92-489*).

Additional income, property or financial resources

Each application will be determined according to the individual circumstances of the case.

However, there is a range of circumstances that may form the basis of an application under this reason. It may be that a parent:

- has substantial property but a small child support income amount,
- has legitimately arranged their financial affairs to minimise tax,
- receives income which is not assessable or is exempt from tax,
- received a lump sum payment that is not included in the child support income amount.

In some cases, a parent's financial circumstances or the issues associated with the case may be too complex to be determined by CSA. In these cases CSA may refuse to change the assessment and recommend that the parent apply to a court for an appropriate determination of the level of child support (section 98E).

When making a decision under this reason, CSA must disregard any entitlement the payee might have to an income-tested pension, allowance or benefit. Generally, CSA must also disregard the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child. However, CSA will consider whether a parent has capacity to earn or derive additional income including a consideration of assets that do not produce, but are capable of producing, income (section 117(7A)).

Unfair or 'unjust and inequitable' assessment based on taxable income

Once CSA has determined that the parent's income, earning capacity, property and financial resources are not reflected in the child support assessment, it must decide whether this produces an unfair result.

CSA can consider the parent's total financial circumstances and decide whether the child support income amount correctly reflects their capacity to support their children. Before arriving at a view that the level of child support is unfair CSA will compare any change in the parent's income against any change in the parent's commitments and expenditure at the time of the application (*Ross and McDermott(1998) FLC 98-003*).

This element of the reason, in relation to whether the assessment results in an 'unjust and inequitable level of child support', is narrower than the 'just and equitable' elements under section 98C of the Act. Here, the comparison of the income, earning capacity, property and financial resources to the child support assessment may be based on quantum.

Example

> CSA may determine that a parent has an income that is marginally greater than the child support income amount but, overall, it does not render the assessment unjust and inequitable. Similarly, it may be established that a parent has property which does not produce an income but, overall, the value of the property does not render the assessment unjust and inequitable.

Asset rich but income poor

In some cases a parent might have substantial property and assets but a low child support income amount.

CSA may consider the parent's property and assets, as well as any income, in deciding the appropriate rate of child support to be paid (*Abela and Abela (1995) FLC 92-568* and *Bendeich and Bendeich (1993) FLC 92-355*).

CSA will take into account that child support is intended to meet the day-to-day needs of the child, when considering a parent's capacity to contribute to supporting a child.

It is not sufficient for a parent to say that they are unable to pay child support because their assets produce little or no income or will only produce income at some point in the future. CSA will consider whether the parent has the capacity to restructure their financial affairs to produce an income stream from which to contribute to child support. In these cases, CSA may:

- identify the relevant assets, determine ownership of such assets and enquire as to any structures designed to divest assets,
- consider whether the assets are income—producing assets and, if so, when such income will be produced,
- ascertain the value of the assets,
- ascertain the parent's ability to convert the assets, or some of the assets, to cash,
- consider the parent's ability to finance his or her lifestyle,
- consider the impact of any property settlement on the parent's assets.

CSA does not have to identify any specific source, property or asset from which a parent should meet the obligation to contribute to the support of the child. CSA need only consider the parent's financial resources as a whole, including any capacity to borrow against the assets (*Dwyer v McGuire (1993) FLC 92-420*).

Low income from a family business

A parent who receives a low taxable income from a family business may have access to additional financial resources, or alternatively he or she may have an additional earning capacity.

In determining the parent's financial resources, CSA may consider the following factors:

- consideration of past or current ability to maintain a particular lifestyle and acquire assets,
- identification of additional benefits obtained from the business,
- whether or not the business has been structured to minimise a parent's income including: the degree of control which the parent has over the business or the person who is entitled to the profits of the business, or whether income splitting is occurring,
- the person who actually does the work of the business.

CSA may determine that a parent's income is greater or lower than the amount upon which they have been assessed. Alternatively, CSA may decide that the parent's financial resources give the parent a greater capacity to contribute to the financial support of the child than is indicated by the assessment.

Alienation of income and a 'corporate veil'

A reduction of a parent's taxable income by alienation of personal services income or other income will result in an artificially reduced or increased child support liability.

Alienation of income

Generally, income is alienated when the income generated or derived by a person is attributed to others and, consequently, reduces the first person's taxable income. Personal services income, or income derived through personal exertion, can be defined as income that an individual earns predominantly as a direct reward for their personal efforts. Personal services income paid to a company, trust or partnership is also alienation of income.

If a parent is involved in alienation of his or her personal services income, this may indicate that he or she has additional income or financial resources that make the current child support assessment unjust and inequitable (section 17(2)(c)(ia)).

The Australian Taxation Office (ATO) has a published view in respect of the taxation consequences of arrangements that seek to alienate a person's taxable income. The ATO may make decisions concerning these arrangements for the purposes of taxation legislation and may have regard to the principles outlined in the publications. CSA may consider these principles in deciding whether such arrangements exist but can

make a different decision about how they should be treated for the purposes of the Assessment Act.

Many of the concepts relating to alienation are based on the term 'personal services income'.

Some common examples of income from personal services are:

- salary and wages,
- income derived by a professional person who practises on their own account without professional assistance,
- income payable under a contract where the payment under the contract relates wholly or principally to the labour of the person concerned, and
- income derived by a professional sportsperson or entertainer through the exercise of their particular skills.

Where personal services income is included in the taxable income of people other than the person who earned it the ATO considers that the tax avoidance provisions apply to cancel any tax benefits (Part IV of the Income Tax Assessment Act 1936). If the ATO is satisfied that such an arrangement was entered into primarily, or predominantly, to avoid liability for income tax by the means of the splitting of income, then the arrangement will be ineffective for income tax purposes. The tax benefit arising out of the arrangements will be removed.

Where incorporation does not reduce personal income

In certain circumstances the ATO accepts that interposing a company, trust or partnership has no adverse taxation effects. For example, the incorporation of a professional practice that does nothing more in relation to income tax than reduce a professional person’s income by the amount of an appropriate superannuation cover.

A professional practitioner may operate through a trust structure provided that the trust structure achieves the same result for income tax purposes as an incorporated professional practice. The ATO requires that the professional practitioner be the sole beneficiary of the trust.

CSA will have regard to these principles in determining whether such arrangements exist but may make a different decision to that of the ATO about how the arrangements should be treated for the purposes of the parent's child support assessment.

How CSA identifies income that is alienated

In determining whether personal services income has been alienated through a company, trust or partnership, CSA will consider the following factors:

- the nature of the parent's activities,
- the extent to which the income depends upon the parent's own skill and judgment,
- the extent to which the company's assets, or trust's assets, are used to derive the income,
- the number of employees and others engaged in the income-producing activity,
- the time at which the company, trust or partnership was established,
- any other relevant matters.

Where are the ATO's views on alienation of income found?

The following publications are available on the ATO's website at the following address: http://law.ato.gov.au/atolaw/index.htm

- IT 2121: Family Companies and Trusts in relation to Income from Personal Exertion. This sets out the way in which the Commissioner will deal with such arrangements, the features of such arrangements and some relevant case law;
- IT 2330: Income Splitting. This ruling is concerned with partnerships that involve professional services.
- IT 2503: Incorporation of Medical and Other Professional Practices deals with companies which have been incorporated to take over the activities of professional practices. Whilst this ruling refers to incorporation of medical and other professional practices, the Commissioner applies similar principles to other cases in which personal services income is derived through an interposed company or trust.
- IT 2639: Income Tax: Personal Services Income

- TR 94/8 Income Tax: whether business is carried on in partnership (including 'husband and wife' partnerships). This states that the question is one of fact and it outlines factors that will be taken into account by the Commissioner. In particular, the existence of a partnership is evidenced by the actual conduct of the parties towards one another and towards third parties during the course of carrying on a business;
- TR 2001/7 Income tax: the meaning of personal services income.
- TR 2001/8 Income tax: what is a personal services business?
- TR 2003/6 Income tax: attribution of personal services income.
- TR 2003/10 Income tax: attribution of personal services income: Income tax: deductions that relate to personal services income.

How these issues apply to a change of assessment decision

Whether company, trust or partnership income is derived from the personal exertion of a parent needs to be examined in each case. The primary issue is the extent of the connection between the parent and the income derived and the services rendered by the interposed entity.

Income other than personal services income

There may be cases involving corporate, trust or partnership arrangements which involve the alienation of income other than personal services income (e.g. rental income). In these cases CSA will examine the structure of the company, trust or partnership. CSA may take into account any relevant taxation ruling or guideline which has been issued by the ATO, but may make a different decision on how the facts are applied to child support.

CSA will consider whether the arrangement alienates income which should properly have been included in the child support income amount (in respect of companies refer to *Stein and Stein (1986) FLC 91-799*, in respect of trusts refer to *Harris and Harris (1999) FamCA 1228* and also *Ashton and Ashton (1986) FLC 91-777*; in respect of partnerships refer to *Dwyer v McGuire (1993) FLC 92-420*). CSA may conclude that a company or trust is the alter ego of the parent; or that a company or trust is a sham for the purposes of the Assessment Act or that a partnership is ineffective.

In relation to a company structure, CSA can consider the following factors:

- whether the parent is actually running the business,
- whether the parent is the 'head and brains' of the company, and
- whether the parent exercises control of the company and the extent of such control *(Letcher and Secretary of Social Security (Administrative Appeals Tribunal, Sydney, 15 September 1995))*.

In relation to a trust structure, CSA can consider the following factors:

- the trust deed,
- the settlor, the trustee and the beneficiaries of the trust,
- whether the arrangement only gives the appearance of creating legal rights or obligations or whether the arrangement was never intended to create such rights or obligations,
- whether any income from the trust has been applied directly or indirectly for the benefit of the parent,
- whether the parent has actual control of the assets of the trust and the income.

In relation to a partnership, CSA can consider the following factors:

- the parties' mutual intention to act as partners is essential in demonstrating the existence of a partnership,
- the terms of any written or oral partnership agreement,
- the parties' conduct including the extent to which the all parties are involved in the conduct of the business or partnership, their contributions to the capital and asset base of the partnership, etc.,
- the amount of distribution to the parent and the partners including any entitlement to a share of the net profits, etc.,
- the amount of any salary paid to a parent and the partners and the reasonableness of any salary,
- that there is a 'joint' nature to the parties' conduct including the existence of bank accounts, business accounts, liability for business debts, ownership of business assets, etc.,
- other indications of a business partnership including separate and distinct business records, a

registered business name and features indicating that there is public recognition of the partnership, etc.,
- any other relevant factor.

Income in the form of undistributed profits

A parent may be retaining profits in a company, trust or partnership structure instead of distributing them to themselves or others. This has the effect of reducing the parent's taxable income.

Alternatively, a parent may pay an unreasonably high wage to an associated person through the company that reduces the income that could be paid to the parent. In determining whether a wage is reasonable CSA will consider the following factors:

- the number of hours worked,
- the duties performed,
- the hourly rate of remuneration, and
- the amount paid commercially for the type of work undertaken.

Self employment and business expenses

A parent may be involved in a business as a sole trader in person or under a trading name. A business may deduct certain expenses from income for tax purposes and as a result legitimately may have a reduced income or may even run at a loss. These deductible expenses can result in a child support assessment that does not take into account the full financial resources available to the parent. In these cases, assessing child support on the basis of taxable income can result in an unjust and inequitable level of child support.

What are business expenses?

Common examples of business expenses include:

- expenses that are partly business and partly private, e.g. telephone, home office or motor vehicles;
- salary and wages paid to employees;
- depreciation of property, plant and equipment;
- capital deductions related to primary production;
- prior year losses and capital losses.

If the tax deductible business expenses provide a personal benefit to the parent, this may make the child support assessment 'unjust and inequitable'. CSA will consider whether the parent has a greater financial capacity than is indicated by his or her taxable income, either as a direct result of the deductions or of having certain personal costs defrayed by being tax deductible.

Salary and wage earner offsetting business losses

A parent who is a salary or wage earner may operate a business as well as receiving a salary or wage. Expenses relating to the business activity may legitimately be offset against salary or wage income for tax purposes. This can result in a reduced taxable income, which will in turn affect the child support assessment.

However, when considering a change of assessment application, CSA may decide that the offsetting of business expenses has led to a taxable income which does not accurately reflect the parent's full capacity to contribute to the support of the child from his or her income, property and financial resources (*Bassingthwaite v Leane* (1993) FLC 92-410 and *Humphries and Humphries* (1993) FLC 92-430).

In determining the parent's income and financial resources CSA can consider the following:

- the nature of the business activity;
- the parent's qualifications for running such a business including the parent's previous business experience and skill;
- the parent's financial situation prior to establishing the business;
- the income which the business is likely to produce or is producing;
- the time at which the business was established;
- the asset to which the business expenses relate;
- the income available to the parent through salary and wages;
- any other relevant matters.

Expenses partly for business purposes and partly for private purposes

Where an expense is partly business and partly private the expenses must be apportioned for taxation purposes. Parents who are self-employed or who operate a business might claim expenses that may otherwise be considered private as a legitimate income tax deduction. Examples include the fixed-costs component of telephone expenses such as the rental and connection fees, home office expenses or motor vehicle expenses. These deductions are generally not available to parents who derive income solely from salary and wages.

If CSA concluded that, as a result of the deductions, the parent has additional income or financial resources that are not taken into account in the child support assessment, a reason to change the assessment may be established.

Salary and wages paid to relatives or associated persons

A parent who operates a business may legitimately deduct the wages or salaries paid to employees. However if, the employee is a related person, such as the parent's new spouse, de facto partner or a family member and the payments exceed the reasonable value of the work performed, CSA may treat the income of that employee as the income of the parent. In deciding whether to treat part or all of such salary and wage payment as the parent's income, CSA will consider the following matters:

- the number of hours worked by the employee;
- the duties performed and qualifications of the employee to perform the work;
- whether the rate of remuneration is proportional to the employee's contribution; and
- the usual amount paid for the type of work undertaken in a commercial arrangement at 'arm's length'.

Depreciation

Depreciation represents the loss or expense attributed to the use of business property or equipment. A claim for depreciation can result in a parent having additional 'cash in hand' that may be considered a financial resource. In cases that involve depreciation, CSA will determine whether receiving a benefit through claiming depreciation expenses results in a parent having greater financial resources or income than his or her taxable income would indicate. CSA will consider a parent's complete financial situation and the individual circumstances of the case. If the amount claimed as depreciation is used or set aside for replacing equipment then this is unlikely to provide the parent with additional financial resources. On the other hand, if the parent spends the benefit of depreciation on day-to-day living expenses or recreational expenses this is likely to be a reason for changing the assessment.

CSA can also consider the asset that is the subject of the depreciation expense, whether the asset is used for both business and private activities and whether the written down value is a reflection of market value. A luxury car leased as a work vehicle might also be used for private purposes.

Other capital expenses

The principles above apply equally to any business in which there is substantial expenditure on the acquisition or development of plant and equipment. A parent may claim that capital investment is warranted at present as it will produce a higher income and therefore higher child support in the future. In each case CSA will consider the parent's complete financial situation and the individual circumstances of the case as well as the extent of the capital investments.

Prior year losses and capital losses

For taxation purposes some deductions may be claimed during a year even though there has not yet been any direct expense in that year.

Example

> Where a taxpayer has a tax loss (more deductions than income) they may be able to deduct that loss from income received in later years.
>
> There are also special rules for capital losses. They may be carried forward indefinitely to be deducted against any future capital gain.
>
> In either case, the result is that a person may have a lower taxable income in a future year and therefore

a lower (or higher) assessment of child support.

In these cases CSA will determine the parent's capacity to contribute to the financial support of the child. CSA may consider the relationship between the loss and the actual expenditure.

Example

Capital gains losses from 1989 may be carried forward and offset against a capital gain in 1998. As the loss occurred 9 years earlier a parent may have additional financial resources in 1998. The parent has received a benefit in that year without incurring the related expenditure. CSA may decide that the parent has income and or financial resources that are not reflected in the parent's taxable income.

However, it is possible that parents may have made arrangements with creditors to repay an outstanding debt caused by the earlier loss. Any repayments will be taken into account in deciding whether there is a reason to change the assessment.

If the debts or losses have been dealt with in a family law property settlement CSA will consider the terms of the settlement in deciding whether there is a reason to change the assessment.

More complex structures involving businesses

Parents may use a number of different structures to minimise their taxable income. For example, a parent may operate one business as a sole trader but operate associated activities through a company and trust structure. Sometimes the structure used during the parents' relationship is different to the structure used after the relationship has ended. A business may have operated as a family business, as a partnership or as a sole trader during the relationship. After the relationship ends a parent may restructure the business as a company or trust which produces a lower taxable income although the business activity had not changed.

Where there has been an historic pattern of earnings at a particular level and a restructuring results in a lower level of taxable income CSA may assess the level of child support with reference to the earlier capacity.

Parents may use complex business structures in order to minimise the child support income amount. Where the issues raised by the application for change to an assessment are too complex CSA can refuse to change the assessment and recommend that the parent apply to a court having jurisdiction under the Act (section 98E).

Changes that reflect a parent's financial circumstances

Where a parent's financial circumstances are not complicated, and the financial element can be easily identified and isolated CSA may increase the parent's child support income amount.

Example

If business income is reduced by $10,000 as a result of depreciation and that amount is then used for day-to-day personal expenses the depreciation amount may be considered as an additional resource and added back to the parent's child support income.

Where a parent's business provides a new spouse, partner or family member with a level of income that is disproportionate or unjustified given the work performed and the person's skills or experience, CSA may add back the proportion of the income which exceeds a reasonable level of remuneration.

Primary production

Some taxation incentives for the improvement of primary production properties provide deductions by allowing a percentage of the cost or a write-off over a period of time. Examples include the costs of conserving or conveying water, deductions for telephone costs over a 10-year period and outright deductions for measures that prevent land degradation.

Proof of this kind of expenditure alone will not establish a reason to change a child support assessment. However, if the parent has developed a capital structure of primary production that results in the parent being asset rich/income poor, he or she may have additional financial resources and a greater capacity to contribute to the financial support of the child.

Farm Management Deposits

Primary producers can be subject to extreme fluctuations of income that are not usual in ordinary businesses

and are outside the control of the farmer. Farmers are able to average their income out over a period of five years for taxation purposes, to reduce the impact of marginal tax rates. Additionally, Farm Management Deposits (FMDs) provide farmers with a tax effective way to save money during good years to be used during bad years. By depositing an amount in the FMD, a farmer can reduce his or her taxable income for that year, which would in turn affect the rate of child support payable. The FMD amounts are assessed as taxable income when they are withdrawn in a subsequent year (as long as they remain invested for 12 months).

In deciding whether the FMD provides the primary producer parent with additional income or a financial resource that makes the child support assessment 'unjust and inequitable', CSA will consider the primary producer's surrounding financial situation.

If, for example, the parent makes an FMD in a good year, after a history of low taxable incomes due to poor yields and drought, it would not generally be appropriate to simply add the FMD back into the person's income for child support purposes. If it is likely that the parent will withdraw this deposit over the next few years, the withdrawn amounts will be included his or her taxable income at that time, and taken into account in the assessment of child support in the normal course of events. However, in some cases, it may be appropriate to take account of the income that was paid into the FMD before it is withdrawn, through the inclusion of smaller income amounts over a number of child support periods.

Conversely, if a parent who is a primary producer has had a history of medium to high incomes and is constantly topping up their FMD without making withdrawals (thus reducing their taxable incomes over a number of years), this may indicate that the scheme is merely being used to lower taxable income artificially. In these cases, increasing the parent's child support income amount by the full amount of the particular deposit is likely to be the most appropriate action.

Salary packaging, fringe benefits, Defence Force benefits and allowances

Salary packaging

Salary packaging is an arrangement whereby an employee receives remuneration from their employer by way of a total package, made up of various benefits plus a component paid as salary. Usually the employee has some flexibility in the way that their salary is packaged. Depending upon the nature of the salary package, and whether the benefits are reportable fringe benefits, the person's child support income amount may not be an accurate reflection of their overall remuneration from their employment.

Fringe benefits

A fringe benefit is a benefit that is provided to an employee or an associate of the employee (such as a family member) as part of the employment arrangement. An employee can be a current, future or former employee. The term 'benefit' is broad and includes any right, privilege, service or facility.

Common examples of fringe benefits provided from employment are:

- provision of a car, house or equipment for private purposes,
- a novated lease for purchase of a motor vehicle,
- giving somebody ownership of something, e.g. items of clothing
- permitting somebody to enjoy a privilege or facility, e.g. a discounted loan or discounted airfares
- provision of a service, e.g. use of skill or labour.

An employer has to pay tax on the taxable value of a fringe benefit. The taxable value of a fringe benefit is usually reduced by the amount of any payment by the recipient or employee towards the fringe benefit. There are specific valuation rules for each category of a fringe benefit (Part III FBTAA).

Income derived by the provision of a fringe benefit within the meaning of the FBTAA is exempt income and is not taxable income (section 23L of the Income Tax Assessment Act 1936 - the ITAA).

Employers are required to report on an employee's group certificate all fringe benefits with a total taxable value of more than $1,000 a year (section 135P of the FBTAA). The 'total taxable value'; means the amount that the employer paid or assigned as the value of the benefit. However, the 'grossed up taxable value' (which is the total taxable value as determined by the employer multiplied by a figure pre-determined by the ATO) will appear on the employee's group certificate. The 'grossed up taxable value' will be a larger amount than the 'total taxable value'.

For child support assessments commencing after 30 June 2000, the reportable fringe benefits total included in an employee's group certificate (being the 'grossed up taxable value') is included in the parent's child support income amount and used to calculate the child support assessment.

It is therefore unlikely that a parent';s reportable fringe benefits will be a special circumstance that will warrant a further increase in their child support assessment after 1 July 2000.

In some cases a parent may consider lodging an application to change the child support assessment on the basis that their income, earning capacity, property and financial resources are not properly reflected in the child support assessment because such fringe benefits **have** been included. The fact that fringe benefits have been included in the child support income amount will not, in itself, be a reason to change the assessment. In order to show a reason to change an assessment a parent must show that other circumstances affect their capacity to financial support for the child or that the nature of the fringe benefit received does not provide them with an actual, additional financial resource.

In deciding if the benefit provides the person with an additional financial capacity CSA can consider the individual circumstances of the case including:

- whether the fringe benefit is unusual, or peculiar to the parent's employment;
- whether the fringe benefit is one which cannot be 'repackaged' or converted into salary or wages;
- whether the parent would ordinarily have incurred a similar level of expense for the same kind of 'benefit' provided by the reportable fringe benefit.

A parent may apply for a change of assessment solely because a fringe benefit does not provide him or her with an additional financial capacity. If the parent would have incurred the same kind (or similar kind) of expense but would not have incurred the expense to the extent reflected by the amount of the reportable fringe benefit, and the amount is significant, this may make the assessment 'unjust and inequitable'. CSA may reduce the child support income amount by the difference of the reportable fringe benefit and the estimated expenditure.

CSA may also give consideration to Reason 7 ('necessary commitments in supporting oneself') and decide whether it is appropriate to change the child support assessment for a short period to enable the parent to rearrange his or her salary package or financial affairs. In deciding what is an appropriate period CSA will consider the individual circumstances and the parent's commitments in supporting himself or herself.

Benefits that are not 'reportable fringe benefits'

Some benefits are expressly excluded from the definition of a fringe benefit and do not give rise to any fringe benefit tax liability (section 136(1) of the *Fringe Benefits Tax Assessment Act 1986* 'the FBTAA'). Examples include:

- payments of salary or wages
- approved employee share acquisition schemes
- employer contributions to complying superannuation funds; and
- eligible termination payments (e.g. a 'company' car given or sold to an employee on termination)

CSA will not 'gross up' the value of a benefit of this type. CSA will consider whether the parent could restructure their remuneration package to take the benefit as wages and be in a position to use those monies to meet the child's needs. The final decision will depend on the circumstances of the case and any other reasons under consideration.

Fringe benefits received before 1 July 2000

Before 1 July 2000, fringe benefits received by a parent were not included in their child support income amount. A parent who received a fringe benefit at this time may have had an increased financial capacity because they did not have to spend part of their wages on usual expenditure such as a car or housing. In changing assessments for periods prior to 1 July 2000, it may be appropriate to add the grossed-up value of the fringe benefit to the child support income amount of the parent who received it.

Treatment of Defence Force Benefits exempt from fringe benefits reporting

Certain benefits provided by the Australian Defence Force (ADF) to its personnel are exempt from the fringe benefits reporting requirements. These benefits are provided to ADF members in recognition of the need for

service mobility and the effect this can have on the members' families. The benefits that are excluded from reportable fringe benefit requirements include:

- housing assistance,
- reunion travel for members' dependents,
- education assistance for school aged children in critical years of schooling,
- allowances paid to families with special needs,
- overseas living allowance that compensates for cost of living differences,
- funeral costs, and
- the entitlement to removal expenses upon the breakdown of a marriage.

The benefits listed above are not reported to the ATO, and are therefore not included in the parent's child support income amount. Other ADF allowances are reportable. They are those that have clear personal benefit such as subsidised home loans, private use of official cars or free travel which is not part of reunion travel.

CSA will take into consideration Government policy regarding the exemptions from reportable fringe benefits. CSA will not change an assessment solely because one parent is in receipt of ADF allowances or benefits which are not reportable fringe benefits. However, in cases where other reasons or circumstances exist, CSA may take into consideration the receipt of ADF benefits and allowances when deciding whether it is fair or just and equitable and otherwise proper to make a particular change to the child support assessment.

Defence Force Allowances - non taxable

Australian Defence Force personnel serving in war-like zones receive tax-free salary and additional allowances in the nature of travel allowances paid as compensation for the increased cost to personnel of serving in a war-like zone.

Tax-free payments to Defence Force personnel are not included in a parent's child support income amount and are not therefore taken into account under the usual formula provisions. This may give rise to a change of assessment application from the other parent. If there are no other circumstances peculiar to the case, CSA will increase the parent's child support income amount by the amount of their tax exempt salary, but will not gross-up the value of that salary. CSA will generally not include the value of any additional non-taxable allowances in the parent's child support income amount.

If the parent applying for a change to the assessment raises other grounds, or the other parent makes a cross-application CSA will consider all aspects of the case and consider whether it would be just and equitable and otherwise proper to make a different type of change.

Defence Force Allowances - taxable

Defence Force personnel posted to remote localities in Australia may receive a District Allowance 'paid in recognition of the higher than normal cost of living in adverse circumstances, including the need to use air-conditioners more than other posts'. The allowance is taxable and the amount received is greater if the recipient has dependants. This allowance is included in the parent's child support income amount for the purposes of calculating their child support assessment. CSA will not change an assessment solely because one parent is in receipt of a District Allowance.

Lump sum payments received by a parent

Where a parent receives a substantial amount of money (a 'lump sum') that would otherwise not form part of his or her child support income amount, and therefore is not included in the assessment of child support, the lump sum may be taken into account in deciding whether the assessment should be changed.

Such payments may arise as a consequence of the parent:

- being retrenched from their employment,
- drawing funds from a superannuation fund,
- receiving a distribution from a deceased estate,
- being compensated for some loss or damage,
- being successful in a lottery or some other gambling venture.

In each case it will be necessary to decide whether receiving the money makes the amount of child support payable unjust and inequitable.

A relevant factor (but not the sole factor) is whether or not the payment results in one parent being in a better financial position compared to the other parent. However, the fact that there is a discrepancy in the parents' financial positions does not automatically mean that there is a reason to change the assessment (*Hampson and Lightfoot (1997) FLC 92-775*). It will depend on the circumstances of each case.

Superannuation

Where a parent has drawn money as a lump sum from his or her superannuation fund, CSA will consider whether that superannuation entitlement was taken into account in any property settlement between the parents. It may be unjust for a parent to have his or her child support assessment based on a taxable income which includes a lump sum payment having regard to the earlier distribution of superannuation and property between the parents (*Carey and Carey (1994) FLC 92-489*).

However, if the parent has a low current income and is making an inadequate contribution to child support CSA may still consider any superannuation received by the parent in deciding that parent's capacity to contribute to the financial support of the child. CSA will also take into account whether the superannuation has been drawn prior to retirement because of severe financial hardship.

Compensation

Where a lump sum is received because of compensation for a personal injury there may be a reason to change the assessment because the payment compensates the parent for past loss of wages or a reduction of future earning capacity (*Harris and Harris (1991) FLC 92-254*).

Where the amount of compensation is set by way of private settlement it can be difficult to establish the portion of the compensation which relates to loss of wages or a decrease in future earning capacity. In these cases a decision by Centrelink concerning the period during which the parent is precluded from applying for social security benefits can be of assistance.

The cost of the parent's future needs may be increased and a part of the compensation, if not all, may need to be preserved to meet those costs. The parent's cost of meeting their future needs will need to be ascertained to decide the extent to which the parent's capacity to contribute to the financial support of the child has been increased because of the compensation payment.

Windfall

Amounts received as a windfall (e.g. a distribution from a deceased estate or success in a lottery or other gambling venture) are not assessable as taxable income. They do not form part of the child support income amount and are not taken into account in a formula assessment.

There may be a reason to change an assessment if it is likely that a windfall will increase the parent's capacity to contribute to the financial support of the child.

The decision will depend on the circumstances of the case and any other reasons under consideration.

Can property or financial resources be invested for future capacity to pay child support?

In some cases a parent, who may have financial or capital resources, may claim that they should be able to invest those resources now in the expectation that they will be available to support the child in the future. As assessment of child support is intended to ensure that parents contribute to the day-to-day needs of the child (*Dwyer and McGuire (1993) FLC 92-420*). It is not sufficient for a parent to say that they are in a different situation to a wage and salary earner, for example, because their income has been converted to - or is tied-up in - real estate or other assets. In these cases, CSA will decide whether the parent has a capacity to restructure their financial situation to provide current financial support for the child.

Social security payments to the payer or payee

CSA must disregard the payee's entitlement to an income-tested pension, allowance or benefit when considering the payee's income, earning capacity, property and financial resources (section 117(7)(b)(ii)).

Social security payments made to the payer will be taken into account when considering the payer's income, earning capacity, property and financial resources, with the exception of Family Tax Benefit payments paid for any children in the payer's care (including a child for whom the payer is liable to pay child support).

Unemployment and under-employment

A parent who becomes unemployed may lodge an estimate of his or her reduced future income, (e.g. a government benefit) which will affect the rate of child support payable.

An estimate will only affect the parent's child support assessment from the date that it is lodged. An estimate is not available to a parent whose income reduces, but is still at least 85% of their child support income amount. In cases where an estimate is not available, or was lodged late, the assessment will not reflect their reduced income and might be unjust and inequitable. These may be special circumstances that would warrant a change of assessment.

A parent's earning capacity

When can CSA take into account a parent's earning capacity?

From 1 July 2006, CSA can only determine that a parent's earning capacity is greater than is reflected in his or her income used in the child support formula if it is satisfied about all of the following three matters:

1. The parent is either:
    - not working despite ample opportunity to do so (section 117(7B)(a)(i)); or
    - has reduced his or her weekly hours of work to below full time work (section 117(7B)(a)(ii)); or
    - has changed his or her occupation, industry or working pattern(section 117(7B)(a)(iii)).

AND

2. The parent's decision about his or her work arrangements is not justified by either:
    1. his or her caring responsibilities (section 117(7B)(b)(i)); or
    2. his or her state of health (section 117(7B)(b)(ii))

AND

3. The parent has failed to show that the decision about his or her work arrangements was not substantially motivated by the effect this would have on the child support assessment (section 117(7B)(c).

CSA must be satisfied that all three compulsory criteria are satisfied before it can change an assessment to take into account a parent's earning capacity, rather than his or her actual income.

If the parent's circumstances satisfy only one or two of the criteria, CSA cannot make a decision based on the parent's earning capacity.

CSA must also be satisfied it would be possible for the parent to increase his or her income by changing his or her work arrangements. That is, work must be available for the parent in his or her area and the parent must have the necessary qualifications and experience to perform that work.

Not working; working reduced hours; or has changed industry, occupation, or working pattern

This is the first of the three compulsory criteria for an earning capacity decision.

The first criterion, as stated in the Assessment Act, is that CSA is satisfied that the parent:

- does not work despite ample opportunity to do so (section 117(7B)(a)(i)); or
- has reduced their weekly hours of work below the usual full-time standard in the occupation or industry in which he or she is involved (section 117(7B)(a)(ii)); or
- has changed his or her occupation, industry or working pattern (section 117(7B)(a)(iii)).

It is possible that a parent will meet more than one of these sub-criteria.

Except where the parent does not work, a parent who has not reduced his or her income cannot be found to have a higher earning capacity.

Example

> A parent who refuses a promotion at work, maintaining his or her income at the same level, will generally not be found to have a higher capacity to earn.

Some reductions in income will not satisfy this criterion.

Example

> A reduction from regular overtime to a standard working hours week or loss of bonuses which required additional effort beyond that required of a standard employee, cannot be considered as founding a parent's additional earning capacity.

Does not work despite ample opportunity
(section 117(7B)(a)(i))

A parent who is not working is one who is not engaged in work for remuneration, or in self-employment for profit.

A person can be said to be not working despite 'ample opportunity' to work if he or she has had offers of employment and refused them without adequate reason. Alternatively, if the person is not seeking work but there are job vacancies for which he or she is suitably qualified in their local area, this could also constitute ample opportunity to work.

Weekly hours of work reduced below the full-time standard for that occupation or industry
(section 117(7B)(a)(ii))

This sub-criterion may apply when a parent is still employed and has remained in the same occupation or industry. The relevant factor is that the parent now works less hours than they did previously. The fact that his or her hours have reduced is not in itself sufficient - the reduction must put those hours below the usual full time standard for the occupation.

The parent should be able to provide information about the usual full-time standard hours for their particular industry or occupation. Alternatively, CSA could obtain information from the person's employer.

Changed industry, occupation, or working pattern
(section 117(7B)(a)(ii))

This sub-criterion may apply when the parent is still employed, but has changed jobs, or rearranged his or her hours of work, or pattern of work. It is implicit that this change in industry, occupation or working arrangements has resulted in a lower income.

For a parent to change his or her occupation or industry requires a greater change than simply moving between employers or jobs. There needs be something in the nature of a change in career, or of working in the same type of job but in an entirely different field.

A parent who has changed his or her working pattern may still be in the same job, or employed in the same occupation or industry. What is relevant is whether the person has changed his or her hours of work, for example, by choosing not to work nights or weekends.

A parent may change his or her working arrangements, for example, to being a consultant or sub-contractor rather than an employee. In these situations CSA is satisfied that there has been a change in their working pattern.

If the CSA is satisfied that the parent meets the first criterion (i.e. because he or she meets one or more of the three sub-criteria discuss above) it may be appropriate to make a decision to base the assessment on that parent's earning capacity. However, CSA may only make a decision of that type if the parent's circumstances also meet the remaining two compulsory criteria discussed below.

Decision not justified by the parent's caring responsibilities or state of health

This is the second of the three compulsory criteria for an earning capacity decision.

This criterion is that CSA is satisfied that:
the parent's decision not to work, to reduce the number of hours, or to change his or her working pattern is **not justified** on the basis of:

- the parent's caring responsibilities (section 117(7B)(b)(i));or
- the parent's state of health (section 117(7B)(b)(ii)).

This is an objective test. The CSA must consider whether an ordinary, reasonable person would consider the parent's decision to be justified, rather than whether the parent who made the decision considers that their decision was justified. It is also important to note that if the parent's caring responsibilities or state of health do not adequately justify the parent's decision about his or her work arrangements, then CSA must then consider the third criterion below, relating to the parent's purpose in making that decision.

Parent's caring responsibilities
(section 117(7B)(b)(i))

The type of caring responsibilities that might justify a parent's decision to change his or her working hours will only be a personal responsibility to care for another person. Caring responsibilities include responsibilities to persons other than the parent's own children, such as their own parent, a new partner or step-children, elderly relatives or friends.

CSA will take into account the following factors when considering whether the parent's decision to change their working arrangements because of their caring responsibilities is justifiable.

- the relationship between the person being cared for and the parent providing care;
- whether the parent has a legal duty to maintain the person for whom he or she is providing care;
- if the parent has does not have a legal duty, whether they have a moral duty and the extent of that moral duty;
- the degree and type of care provided;
- whether the parent has some capacity for part time or casual work in conjunction with his or her caring responsibilities;
- the availability of alternate care (personal and institutional);
- whether that alternate care is suitable and/or affordable; and
- the previous and proposed duration of the period of care.

CSA will weigh up the evidence about these and any other relevant matters in order to decide whether it is satisfied that the parent's caring responsibilities are such that they justify his or her decision to change his or her working arrangements.

The parent who is primarily responsible for care of the children for whom child support is payable may not be employed, or may be working part-time in order to accommodate his or her child care responsibilities. Where this is a longstanding arrangement (e.g. one that existed prior to separation, or since the children were born) the parent primarily responsible for care of the children may not have an additional earning capacity, because his or her ability and opportunity to undertake paid employment is diminished by their child care responsibilities and their absence from the workforce.

In cases where the payee is the sole provider of care for a child of the relationship (i.e. for 70% or more of the time) his or her disregarded income is set at the rate of average weekly earnings for all employees. Therefore, if the payee's earning capacity (taking into account his or her child care responsibilities) does not exceed the rate of average weekly earnings, it would not affect the rate of child support to be provided by the payer and would not make the assessment unfair.

A parent who has been in the workforce may cease work, or reduce his or her work commitments to accommodate their responsibilities to care for a child. The child for whom the parent provides direct care could be the child from a former relationship (for whom child support is payable), or a child of a new relationship. In such cases, the parent (whether he or she is the payer or payee in the case) may still have an unexercised earning capacity that makes the assessment unfair. CSA may consider the following relevant facts over and above those considered in other earning capacity cases:

- the age, health and number of children being cared for,
- the practical availability of child-care,
- the economic cost of child-care compared with income available to be earned,
- the proposed period of the parent's absence from the work force, and
- whether the parent has appropriately balanced his or her obligation to support all of his or her children.

If the parent's caring responsibilities do justify his or her decision about his or her working arrangements, then

CSA must not make a decision to base the child support assessment on the parent's earning capacity. However, if the parent's caring responsibilities would not preclude work, or additional work, CSA must proceed to consider the third criterion below, namely, the parent's purpose in making the decision about his or her working arrangements.

Parent's state of health
(section 117(7B)(b)(ii))

As with a parent's caring responsibilities, if a parent has health problems, this may mean that he or she does not have an earning capacity that makes the assessment 'unjust and inequitable'. If the Registrar is satisfied that the parent's state of health is such that he or she does not have an unexercised earning capacity that makes the assessment 'unjust and inequitable', it will not be necessary to consider whether the parent's circumstances satisfy the criteria in section 117(7B).

CSA will take into account any evidence that the parent presents about his or her state of physical and mental heath. It would usually be expected that a parent who claims to have made a decision to change his or her work arrangements because of his or her health will have been diagnosed by a qualified medical practitioner; treated for the condition and have made that decision based on medical advice. Therefore, the parent would usually be able to provide medical certificates or reports from his or her treating doctor, and/or reports from any specialist to whom the parent was referred.

The following factors are relevant in considering whether the parent's decision about his or her working arrangements is justified on the basis of the parent's state of health:

- the parent's condition, and the effect that this has upon his or her capacity to work;
- the expected duration of the condition;
- any recommended treatment, and the impact that this has on the parent's capacity to work;
- the availability of light duties, if the parent could work in a restricted capacity.

CSA will weigh up the evidence about these and any other relevant matters in order to decide whether it is satisfied that the parent's state of health is such that it justifies his or her changed work arrangements. If the parent's state of health does justify his or her decision about his or her working arrangements, then CSA must not make a decision to base the child support assessment on the parent's earning capacity. However, if the parent's state of health would not preclude work, or additional work, CSA must proceed to consider the third criterion below, namely, the parent's purpose in making the decision about his or her working arrangements.

Purpose of the parent's decision about working arrangements

This is the third of the three compulsory criteria for an earning capacity decision.

The third criterion, as stated in the Assessment Act, is that CSA is satisfied that the parent has failed to demonstrate that affecting the assessment of child support was not a major purpose of his or decision to not work, to reduce hours or change his or her occupation, industry or working pattern (section 117(7B)(c).

The test is framed as a 'rebuttable presumption'. The starting point is that affecting the child support assessment is presumed to be a major purpose of the parent's decision about his or her working arrangements. The parent can rebut this presumption by demonstrating, to CSA's satisfaction, that affecting the child support assessment was not a major purpose of his or her decision.

This is a subjective test. The CSA must consider what the parent's purposes were in making the decision about his or her working arrangements and whether a major purpose was to affect the child support assessment. It is not necessary that CSA is satisfied that the parent's decision was objectively reasonable, but the reasonableness of the decision is a factor for CSA to consider in deciding whether it is satisfied that the parent has demonstrated that affecting the child support assessment was not a major purpose in his or her decision.

In considering the reasonableness of the decision, it needs to be kept in mind that this policy on earning capacity is intended to be flexible enough to allow parents to make decisions about their work and life, for example, choosing to pursue a different career. It is not the intention to micro-manage a parent's life on the basis he or she may have made a better decision about employment than he or she did in fact make.

The provision refers to 'a major purpose' not 'the major purpose'. This means that the parent can have more than one major purpose in making the decision. A major purpose does not have to be the dominant purpose. It is more than a 'significant purpose'. A suitable test would be whether affecting the child support assessment was one of the most important factors in the parent's mind at the time of making the decision about his or her working arrangements.

The usual way for a parent to rebut the presumption would be to show that there were other factors that he or she considered which were the major purpose and that affecting the child support assessment was not a major purpose. CSA will ask the parent to explain:

- the factors they took into account in making their decision to reduce their earnings or not to work
- what financial arrangements exist to enable them to support themselves
- the consideration they have given to the arrangements to support the children for whom child support is payable after they changed their work arrangements.

CSA will also take into account any other relevant information that is already available in CSA's records, including:

- statements the parent may have made when advising CSA about their change in work arrangements;
- statements he or she may have made when CSA was discussing collection activities; and
- comments made by the other parent in the course of the change of assessment proceedings.

In particular cases, CSA may also contact the parent's employer or former employer to establish what reason the parent gave when he or she notified the employer of his or her decision.

If the parent cannot demonstrate that affecting the child support assessment was not one of the major purposes in the decision, he or she will fail to rebut the presumption and it may be appropriate for CSA to make a decision to base the assessment on that parent's earning capacity.

It is more likely that a parent will be found to have a higher capacity to earn where he or she has voluntarily made a change resulting in a reduction in his or her income. Where a parent has made a change involuntarily, such as being made redundant, he or she will be unlikely to be found to have a higher capacity to earn where he or she has made reasonable efforts to resume income earning activities. Documentation which should be available to CSA to substantiate claims relating to unemployment includes:

- separation certificates and termination statements,
- a 'job diary', as required by Centrelink for some 'Newstart' beneficiaries,
- copies of job applications and responses.

Study

A parent might decide to leave their employment (or reduce their hours of employment) in order to undertake a course of study. If the parent cannot demonstrate to CSA's satisfaction that affecting the assessment of child support was not a major purpose of his or decision to undertake study, it maybe appropriate to base the child support assessment on the parent's earning capacity, rather than the parent's reduced income.

CSA can consider the following relevant factors:

- the parent's reasons for undertaking the course of study,
- the length of the course of study,
- whether the parent took into account his or her obligation to provide financial support for the children during the period of study,
- the needs and situation of the children at the time of the application and during the period of study,
- the manner in which the parent will support himself or herself during the period of study,
- whether part-time work or part-time study was available,
- the length of time the parent had been planning to undertake the course of study,
- the likelihood of securing employment, and of deriving increased income, after the course of study,
- the qualification that would be awarded on completion of the course of study.

Even if CSA is satisfied that affecting the child support assessment was not a major factor in the parent's decision, failure to resume work following the anticipated course of study may leave the parent open to a further consideration of his or her earning capacity.

Change of occupation or industry

A parent's decision to change occupation or industry while maintaining full-time employment, resulting in a reduction in income, is not likely to lead to a finding of an increased earning capacity, especially if the parent's previous employment was dangerous or required significant travel and time away from home.

What is a parent's earning capacity

In respect of the earning capacity of the unemployed or under-employed parent, CSA may enquire as to the 'ability of' and 'opportunity for' that person to seek and gain employment (DJM and JLM (1998) FLC 92-816). CSA will consider the parent's qualifications, skills, age and employment history.

Examples

> A parent who has been caring for children and has not been in the paid workforce for many years may have difficulty entering the workforce.
>
> A parent who has been in the same job for 20 years, and is made redundant, may have similar difficulty.
>
> On the other hand, a parent who is qualified in an occupation in high demand would be expected to enjoy considerable flexibility in their choice of employment.

The other relevant consideration is whether or not there are any special, local or other factors that affect a parent's capacity to secure employment. Opportunities for employment vary from place to place and between occupational groups.

In determining the extent of the parent's earning capacity, CSA may consider the following (Scott and Scott (1994) FLC 92-457):

- the circumstances in which the parent became unemployed or without income,
- the reasons for the unemployment or loss of income,
- the nature of the parent's previous employment,
- the efforts which they have subsequently made to obtain employment,
- the property or financial resources that are, or should reasonably be, available to the parent.

CSA must weigh up the individual factors of each case in deciding whether a parent who has ceased work, or reduced his or her hours, has the ability and opportunity to earn a greater amount, and whether that additional earning capacity makes the child support assessment unfair.

Version 1.5

Issued 1 July 2006

< Previous Next >

2.1.3: Deciding to accept or refuse an application

Context

When CSA receives an application for a child support assessment it must decide whether to accept, or refuse the application.

Legislative References

Sections 23, 24, 25, 25A, 27, 29(1), 30 and 31 *Child Support (Assessment) Act 1989*

Explanation

If CSA is satisfied that a person has properly made an application for a child support assessment, it must accept that application (section 30(1)).

CSA can refuse an application if not satisfied that it was properly made (section 30(2)). CSA can defer making a decision where an applicant requires further time to supply further information or evidence. CSA will usually contact an applicant and give them 7 days to provide further information.

An application is properly made if it complies with sections 24, 25, 25A and 27 of the Assessment Act (section 23).

- Section 24 specifies which children an application can be made for.
- Section 25 specifies which carers can make an application.
- Section 25A provides that liable parents can make an application.
- Section 27 deals with the manner in which applications can be made.

See chapter 2.2 Eligibility (including parentage and care) for details of the requirements of sections 24, 25 and 25A.

CSA is not required to conduct any inquiries or investigations when deciding whether an application complies with sections 24, 25 and 25A. CSA can act on the basis of the application and any documents which accompanied it (section 29(1)). However, CSA is not prevented from seeking further information or evidence.

If CSA accepts an application it must make a child support assessment for a child support period that starts on the day that the application was made to CSA, Centrelink or the ATO (section 31(2) and regulation 12) (See chapter 2.3 Child support periods).

Version 1.0

Issued 1 October 2002

< Previous Next >

2.1.4: Notice of the decision

Context

If CSA accepts an application for a child support assessment it must notify the applicant and the other parent. CSA must notify the applicant if it refuses an application for a child support assessment.

Legislative References

Section 33, 34, 106B and 107A *Child Support (Assessment) Act 1989*

Explanation

Accepting an application

CSA must immediately notify the applicant and the other parent when it accepts an application for a child support assessment (section 34). The notification must be in writing and must include details about:

- the parents' rights to object to CSA's decision to accept the application for a child support assessment, and
- the liable parent's right to apply to a court for a declaration under section 107 that the carer was not entitled to a child support assessment payable by them for the child (but only where the carer made the application). See chapter 4.3 Court applications for more information about section 107 declarations.

If CSA accepts a liable parent application for a child support assessment the applicant may later, if necessary, apply to a court for a declaration under section 107A that the payee was not entitled to a child support assessment payable by the applicant because the applicant is not a parent of the child. However, an applicant cannot apply for such a declaration if a court has already made a declaration under s106B that the applicant was entitled to a child support assessment.

Refusing an application

CSA must notify the applicant if it refuses an application for a child support assessment (section 33). The notification must be in writing and must include details about the applicant's rights:

If one of the reasons the application is refused is because CSA is not satisfied that the other person named is a parent the applicant must be notified about:

In the case of a carer application:

- that reason and any other reasons why their application was refused, and
- their right to apply to a court for a declaration under section 106A of the Assessment Act . See chapter 4.3 Court applications for more information about declarations under sections 106A.

In the case of a liable parent application:

- that reason and any other reasons why their application was refused, and
- their right to apply to a court for a declaration under section 106B of the Assessment Act that the applicant is entitled to an administrative assessment because the applicant is a parent of the child.

If CSA is satisfied that the other person named is a parent, but the application is refused for any other reason,

the applicant must be notified about their rights:

- to object to the decision, and
- to apply to the SSAT for a review of the decision (no matter who lodges the objection) if they are not satisfied with the decision on the objection. See Chapter 4.2 for information about the SSAT review process.

Version 1.2

Issued 1 January 2008

< Previous Next >

2.1.2: Withdrawing an application

Context

If CSA has not made a decision either to accept or to refuse to accept an application for a child support assessment, the applicant can withdraw their application.

Legislative References

Section 32 *Child Support (Assessment) Act 1989*

Explanation

The person who made an application for a child support assessment can withdraw it if CSA has not made a decision on the application, either to accept it or to refuse to accept it (section 32).

The applicant can usually withdraw their application in writing, in person, or by telephone. Case officers will ask for a withdrawal in writing if they consider it appropriate. (See chapter 6.2)

If a person withdraws their application it is as if the application had not been made (section 32(4)).

Version 1.0

Issued 1 October 2002

< Previous Next >

5.5.2: Entitlement to payment and disbursement cycle

Context

A payee of a registered maintenance liability is entitled to be paid the amounts CSA received in the previous month for child support due and payable by the payer. If the payer is liable to pay child support to CSA for two payees, the amounts are apportioned between those payees.

Legislative References

Sections 4(i), 17, 70, 76 and 113A *Child Support (Registration and Collection) Act 1988*

Regulation 6 *Child Support (Registration and Collection) Regulations 1988*

Explanation

CSA must pay a payee on or before the first Wednesday of each month an amount equal to the total of the following amounts in relation to their registered maintenance liability (section 76(1))

- amounts deducted by an employer in relation to their registered maintenance liability in the previous calendar month
- other amounts CSA received in relation to their registered maintenance during the previous payment period
- amounts not previously paid to the payee that were:
    - arrears amounts deducted by an employer in relation to the liability; or
    - received by CSA before the payment period (i.e. previous advance payments);
- but excluding any amount that was not due and payable by the payer on the seventh day of the current month. CSA will hold these advance payments in credit and apply them against future amounts payable to the payee.

The 'previous payment period' begins 8 days before the first Wednesday of the current month and ends 9 days before the first Wednesday of the following month (section 4(1)).

Example

CSA is collecting child support from M for F. On the first Wednesday in December F is entitled to receive:

- all payments deducted by M's employer during October (due to CSA on 7 November) including any deductions for arrears; and
- all payments, other than payments from an employer, received up until the closing day, which is 9 days before the first Wednesday in December (i.e. the last Monday in November), including any arrears payments,

Except where

- the amount has already been paid to the payee, or
- the amount is an advance payment of a future liability.

CSA is not obliged to make payments to the payee before the first Wednesday of the month following collection. However, there is nothing to prevent CSA making payments early.

In practice, where CSA receives payments on time, it will send the payment to the payee on the third Wednesday of the same month it received the amount. CSA continues to disburse further amounts collected directly to payees' bank accounts from the 3rd Wednesday of the month on a daily basis until the end of that

month.

The minimum amount disbursed is $5.00. However, where the payment is being sent overseas by cheque the minimum amount disbursed is $50.00 (regulation 6).

Apportionment of payments between payees

Where CSA receives a payment from a payer who owes child support to more than one payee and the amount received is less than the sum of those debts, CSA must apportion the payment between the payees in proportion to the amount each of them is owed (section 70).

Example

F makes a payment of $600 for child support payable to M and D. M has no current entitlement but is owed arrears of $1000. D is owed no arrears but has a current entitlement of $500.

CSA apportions the payment, $400 to M and $200 to D.

The exception is where CSA receives an amount from the payer which has been paid in accordance with a court order made in enforcement proceedings brought by a payee (section 70(2)). If this occurs, CSA will disburse the entire amount paid in accordance with the order to the payee who initiated the proceedings (up to the extent of the debt owed to that payee).

Version 1.3

Issued 23 January 2008

< Previous Next >

5.1.4: Collection of arrears accrued during non-collect period

Context

A payee who elected not to have CSA collect maintenance for them when they applied for a child support assessment, or notified CSA of a court order or court-registered agreement can later apply for collection. They can also apply for CSA to collect arrears.

Legislative References

Section 28A *Child Support (Registration and Collection) Act 1988*

Explanation

A payee who previously elected not to have their liability registered for collection can later apply for registration. CSA must register that liability for collection. The payee can also apply for CSA to collect arrears for them (section 28A).

CSA must accept the payee's application for collection of amounts the payer has not paid in the 3 months immediately before the date the liability first becomes enforceable by CSA. CSA will need to be satisfied that the amounts have actually not been paid.

A payee may also apply for collection of amounts unpaid by the payer for 9 months before the liability first becomes enforceable by CSA. This is called the maximum arrears period. If there are amounts unpaid for this period and CSA is satisfied that there are exceptional circumstances it must grant the application.

If CSA grants the payee's application the unpaid amounts become a child support debt and CSA will vary the Register to show that the payer owes these unpaid amounts.

Exceptional circumstances

Whether circumstances are exceptional will depend on the facts in each particular case. The circumstances must be unusual in some way. They may be circumstances beyond the control of the payee that prevented them from applying for collection within a reasonable period. CSA will consider the effect of the particular circumstances on the payee and the extent to which they contributed to the payee's delay in applying for collection.

The following are examples of circumstances that CSA may consider exceptional. This is not an exhaustive list and each case must be considered on its merits.

- The payer threatened or pressured the payee not to apply for registration for CSA collection chapter 6.10 Family violence.
- The payee was ill or had an accident that stopped them for applying for collection.
- The payee suffered a personal trauma such as a death in the family or a natural disaster that caused damage to the payee's property.
- The payee had communication difficulties because of, or including, isolation, illiteracy or poor English-language skills.
- The payer created a false expectation of payment (e.g. they promised to pay a lump sum from the proceeds of the sale of property or a compensation settlement).
- The parents were involved in negotiations over child support and/or other matters and applying for collection may have compromised those negotiations.

In some cases payees may apply for collection after CSA amends a child support assessment retrospectively so that there are significant arrears arising (for example, it may replace a default income or reconcile an

estimate of income). These arrears arise through the ordinary operation of the Act and are not an exceptional circumstance even if the payee was unaware of any change in the payer's circumstances.

Evidence to show exceptional circumstances

The payee must provide suitable evidence for CSA to find there are exceptional circumstances. For example, if the payee states that the payer threatened or pressured them they may provide evidence from a person fully aware of the nature and details of the circumstances such as a doctor, social welfare worker or police officer.

In the case of illness, accident or psychiatric condition, the payee should provide written confirmation from a medical practitioner. In other cases, the payee must supply a full and detailed explanation supported by appropriate evidence.

CSA must provide the payer with an opportunity to comment on information the payee provided to CSA if it is taking it into account to make a decision to grant an application for a maximum arrears period.

Calculating amounts unpaid

In some cases parents provide conflicting information about payments made during the relevant arrears period. CSA will make reasonable investigations, including interviewing customers (by phone or in person) to find details of any payment dates and amounts. It will also take into account any evidence of amounts transferred from the payer to the payee, such as bank records or receipts signed by the payee. It may also decide whether amounts paid during the period were paid for periods in advance or in arrears.

For CSA to make the decision to collect child support in arrears CSA has to be satisfied that the amount was unpaid. To do this it will examine the evidence provided by both parties in relation to the payment. If there is no evidence of payment then CSA cannot be satisfied the disputed amount was paid. The disputed amount will be included in CSA's calculation as an unpaid amount.

CSA will take into account any amounts that the payer has previously paid that would qualify as a prescribed non-agency payment (chapter 5.3 Non-agency payments and offsetting liabilities) when calculating the amounts unpaid. If the payer has paid 70% of the liability directly to the payee, CSA will credit towards the remaining 30% of the liability any further amounts that would qualify as prescribed non-agency payments.

Version 1.7

Issued 3 August 2007

< Previous Next >

5.4.7: Payee's right to enforce debt via court proceedings

Context

Once CSA registers a registrable maintenance liability for collection, the debts arising under the liability are debts due by the payer to the Commonwealth, rather than to the payee. Payment of these debts is generally only enforceable by CSA. However, from 1 January 2007, the payee of a registered maintenance liability can bring court proceedings to recover amounts owed by the payer to CSA.

Legislative References

Sections 30, 37B(7), 105, 111E, 111F, 111G, 113, 113A and 120 Child Support (Registration and Collection) Act 1988

Explanation

In most cases, CSA is solely entitled to and responsible for collecting a registered maintenance liability. The payer may voluntarily make payments direct to the payee or a third party in the form of non-agency payments, however, the payee of a registered maintenance liability may not enforce payments under that liability except by instituting court proceedings under section 113A of the Registration and Collection Act (section 30(3) of the Registration and Collection Act).

Prior notice to CSA

A payee must give prior notice to CSA of his or her intention to institute court proceedings. The notice must be in writing (including by email or facsimile) and given to CSA at least 14 days before the payee files his or her application in the court, unless the court allows for a shorter period because of exceptional circumstances (section 113A(1) of the Registration and Collection Act).

In which court may the payee institute proceedings?

The payee can choose to enforce the debt under the Family Law Act, or take civil action to recover the debt (section 113(1) of the Registration and Collection Act).

Civil action involves obtaining judgment, and then enforcing the judgment through the court.

Proceedings under the Family Law Act may be brought in any court with family law jurisdiction including the Federal Magistrates Court and state, local and magistrates courts. The Family Law Act and Rules (and related Federal Magistrates Rules) apply to child support enforcement proceedings under the Registration and Collection Act as if the proceedings had been brought under the Family Law Act (section 105 of the Registration and Collection Act).

Parties to the proceedings

The payee and payer are the parties to proceedings brought by the payee under section 113A of the Registration and Collection Act. The CSA will not normally be involved, however, it has a discretion to intervene in payee enforcement proceedings (section 111E of the Registration and Collection Act)

The Commonwealth is not liable for costs in enforcement proceedings brought by the payee unless the CSA is involved as a party (section 111G of the Registration and Collection Act). If the CSA is involved, the court would decide, upon application from the parties, whether to order costs against the CSA or any other party.

Payments pursuant to orders

Where the court orders the payer to make a payment, that payment must be made to the CSA. CSA must pay the amount received from the payer in accordance with the order to the payee as soon as practicable.

(section 111F of the Registration and Collection Act).

Court's power to obtain information

In payee enforcement proceedings, the court may exercise the Registrar's powers to obtain information and evidence for the purposes of the Registration and Collection Act (sections 120(1) and 120(1A) of the Registration and Collection Act).

Payee must notify CSA of any orders

The payee is obliged to provide CSA with notice within 14 days of the court making any order in relation to the payee and the debt (including orders about costs – which are not collectable by CSA). (section 113A(2) of the Registration and Collection Act).

Notice may be provided to CSA in writing (including via email or facsimile), personally or via telephone.

It is an offence if the payee fails to notify CSA that a court order has been made in relation to the payee and the debt due in relation to the liability (section 113A(3)).

Version 1.1

Issued 3 August 2007

< Previous Next >

1.5.2: Child's residence

Context

CSA can make or continue a child support assessment for a child who meets the residence requirements of the *Child Support (Assessment) Act 1989*. These requirements can be modified if the payee or payer is in a reciprocating jurisdiction.

Legislative References

Sections 12 and 24 *Child Support (Assessment) Act 1989*

Regulation 11 *Child Support (Assessment)(Overseas-related Maintenance Obligations) Regulations 2000*

Australian Citizenship Act 1948

Explanation

A person can apply for a child support assessment for a child who is (section 24):

- present in Australia on the day of the application; and/or
- an Australian citizen, or ordinarily resident in Australia on the day of the application.

This requirement is modified if the payee or payer is in a reciprocating jurisdiction that is not an excluded jurisdiction (See chapter 1.6 Overseas cases).

A terminating event occurs for the child when the child does not meet at least one of the following residence requirements:

- the child is present in Australia;
- the child is an Australian citizen;
- the child is ordinarily resident in Australia.

This does not apply if the child is in a reciprocating jurisdiction that is not an excluded jurisdiction (See chapter 1.6 Overseas cases).

Present in Australia

This term has its ordinary meaning. It means physically present in Australia.

An Australian citizen

Acquiring Australian citizenship

At birth

A person can acquire Australian citizen at birth.

A child born in Australia before 20 August 1986 is an Australian citizen (section 10 Citizenship Act).

A child born in Australia on or after 20 August 1986 is an Australian citizen only if:

- the child's parent was an Australian citizen or a permanent resident when the child was born; or
- the child was ordinarily resident in Australia until they were 10 years old.

By adoption

A child who is adopted by one or more Australian citizens can acquire citizenship by adoption. The child must be present in Australia as a permanent resident at the time that they are adopted under the law of an Australian state or territory (section 10A Citizenship Act).

By descent

A person who is not an Australian citizen by birth can acquire citizenship by descent (sections 10B, 10C and 11 Citizenship Act). To do this they must apply to the Minister for Immigration for registration as an Australian citizen. They become an Australian citizen if the Minister decides to register them as a citizen.

By application

A person can also apply to the Minister for Immigration for Australian citizenship (section 13 Citizenship Act). They become an Australian citizen if the Minister decides to grant their application. The Minister can also grant citizenship to the person's spouse and children.

Losing Australian citizenship

In certain circumstances, a person can cease to be an Australian citizen if they:

- renounced their Australian citizenship (section 18 Citizenship Act);
- served in the armed forces of a country at war with Australia (section 19 Citizenship Act).

If that person is also a responsible parent of a child under 18, and the child is a national or citizen of another country when their parent ceases to be an Australian citizen, the child also ceases to be an Australian citizen (section 23(1) Citizenship Act).

In certain circumstances, the Minister for Immigration can deprive a person who is convicted of an offence of their Australian citizenship (section 21 Citizenship Act). If that person is also a responsible parent of a child under 18, the Minister can also direct that the child ceases to be an Australian citizen (section 23(2) Citizenship Act).

A 'responsible parent' of a child is (section 5(2) Citizenship Act):

- the child's parent, unless they no longer have any parental responsibility for the child because of a Family Court order
- any person who has a residence order for the child
- any person responsible for the child's long-term or day-to-day care, welfare and development under a specific issues order
- any person with joint or sole guardianship or custody of the child.

However, the child cannot lose or be deprived of their Australian citizenship because of the action of their parent while they still have another responsible parent who is an Australian citizen.

Ordinarily resident in Australia

This term also has its ordinary meaning. It applies to a child who is not physically present in Australia, but who usually lives here. CSA will take into account the same factors that it considers when deciding whether a payer resides in Australia (i.e. in the ordinary meaning of that term).

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.5.1: Payer's residence

Context

CSA can make or continue a child support assessment for a payer who meets the residence requirements of the *Child Support (Assessment) Act 1989*. These requirements can be modified if the payer is in a reciprocating jurisdiction.

Legislative References

Sections 10, 12, 25 and 25A *Child Support (Assessment) Act 1989*

Section 7A(2) *Income Tax Assessment Act 1936*

Regulations 614 *Child Support (Assessment)(Overseas-related Maintenance Obligations) Regulations 2000*

Explanation

CSA can accept an application for a child support assessment for a payer who is a resident of Australia on the day the application is made (sections 25 and 25A Assessment Act). CSA may also be able to accept an application if the payer is in a reciprocating jurisdiction (See chapter 1.6 Overseas cases).

A terminating event occurs when a payer ceases to be a resident of Australia. This does not apply if the payer is in a reciprocating jurisdiction that is not an excluded jurisdiction (See chapter 1.6 Overseas cases).

A person is a 'resident of Australia' for the purposes of the Assessment Act if they are a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* (section 10 Assessment Act). However, a person is not a resident of Australia for the Assessment Act if they are a resident of Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island (section 7A(2) *Income Tax Assessment Act 1936*).

CSA will apply the same tests as the Australian Taxation Office when it decides whether a payer is resident for child support purposes. The primary test is whether the person resides in Australia. This is summarised below.

Resides in Australia

The word 'resides' has its ordinary meaning for this test. The Macquarie Dictionary defines 'reside' as 'to dwell permanently or for a considerable time; have one's abode for a time' and the Shorter Oxford English Dictionary defines it as 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live, in or at a particular place'.

A migrant who comes to Australia intending to reside here permanently is a resident from arrival.

A person who usually resides in Australia but is overseas on holidays continues to reside in Australia during their absence.

When a person arrives in Australia not intending to reside here permanently, or departs Australia temporarily, CSA will take into account all the following factors when deciding if they reside in Australia.

- The person's intention or purpose of presence in Australia and overseas.
- The person's family and business/employment ties in Australia and overseas.
- The location of the person's assets and the arrangements they have made to maintain them.
- The person's social and living arrangements in Australia and overseas.
- The period the person has been physically present in Australia.

The weight given to each factor will vary according to the circumstances of the individual.

If the person does not reside in Australia under ordinary concepts, there are 3 secondary tests to determine whether they are a resident of Australia for tax purposes:

Domicile and permanent place of abode test

183 day rule test

Superannuation test.

Domicile and permanent place of abode test

This test applies to individuals who leave Australia temporarily to live overseas, for example, on temporary overseas work assignments or on overseas study leave.

A person whose domicile is in Australia continues to be a resident of Australia unless their permanent place of abode is outside Australia.

Domicile

A person acquires a domicile of origin at birth. This is the domicile of their parents. If the child's parents live apart, or if one parent has died, the child's domicile is the domicile of the parent with whom they live. A person whose domicile is Australia will maintain their Australian domicile unless they acquired a different domicile of choice or by operation of law. A person will have adopted a new domicile if they can demonstrate an intention to make their home indefinitely in another country (e.g. if the person has obtained a migration visa). A working visa, even for a substantial period such as 2 years, would not be sufficient evidence of an intention to acquire a new domicile of choice.

Permanent place of abode

A permanent place of abode does not have to be 'everlasting' or 'forever'. A person who intends to return to live in Australia in the foreseeable future can still set up a 'permanent place of abode' elsewhere. If a person whose domicile is in Australia is residing elsewhere, CSA will take into account the following factors when deciding if that other country is their permanent place of abode:

- the intended and actual length of the person's stay in the overseas country
- the person's intention to return to Australia at some definite point in time or to travel to another country
- whether they have established a home outside Australia
- whether they have abandoned their residence or place of abode in Australia
- the duration and continuity of their presence in the overseas country
- the durability of their association with a particular place in Australia.

The weight to be given to each factor will vary with individual circumstances of each case and no single factor is conclusive.

183 day rule test

A person who does not reside in Australia can be a resident for tax purposes if they are present in Australia for 183 days of a particular financial year (i.e. from 1 July to 30 June of the following year) unless their permanent place of abode is outside Australia. The 183 days can be a total of several broken periods.

Superannuation test

This test applies to a person who is:

- an eligible employee under the Superannuation Act 1976, or
- a person who is a member of the superannuation scheme established under the Superannuation Act 1990

It is designed to ensure that Commonwealth government employees working at Australian posts overseas are still Australian residents for tax purposes. The person's spouse and any children under 16 years are also treated as Australian residents.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home
Part 1: About the scheme
Part 2: Child support assessments
Part 3: Orders under the Family Law Act
Part 4: Objecting, seeking a review, appealing and applying to court
Part 5: Collecting child support
Part 6: Administration
A to Z index
Current guide
Effective from 1 July 2008

6.1.3: Authorisation to make decision on another's behalf

Context

The Registrar and State Managers have issued written authorisations to enable certain CSA officers to make decisions on their behalf.

Legislative reference

Section 61 *Child Support (Registration and Collection) Act 1988*

Section 151A *Child Support (Assessment) Act 1989*

Explanation

The Registrar and State Managers have signed instruments of authorisation that cover most of the decision-making powers in the Assessment Act and the Registration and Collection Act. These instruments authorise officers to make particular types of decisions on the basis of their position within CSA. A CSA officer who makes a decision under an authorisation is doing so as an agent of the person who holds the power to make decision.

Registrar's instrument of authorisation
(See Instrument of authorisation - including a schedule of authorisation)

State Managers' instrument of authorisation
(See Instrument of authorisation - New South Wales & Australian Capital Territory)
(See Instrument of authorisation - Queensland)
(See Instrument of authorisation - South Australia & Northern Territory)
(See Instrument of authorisation - Victoria)
(See Instrument of authorisation - Tasmania)
(See Instrument of authorisation - Western Australia)

There are also specific authorisations for making a decision to allow or disallow an objection to a decision made under Part 6A of the Assessment Act.
(See Instrument of authorisation - New South Wales & Australian Capital Territory)
(See Instrument of authorisation - Queensland)
(See Instrument of authorisation - South Australia & Northern Territory)
(See Instrument of authorisation - Victoria)
(See Instrument of authorisation - Tasmania)
(See Instrument of authorisation - Western Australia)

Section 61 of the Registration and Collection Act provides that an officer authorised by the Registrar may enter an employer's premises to inspect records for the purposes of collecting child support from salary and wages. The Registrar provides these officers with a personal written authority under section 61.

For information about authorisations under the FOI Act. (See Instrument of authorisation - FOI).

Version 1.5

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.4.5: Bankruptcy

Context

Bankruptcy may also be an option in the enforcement of arrears of child support. As a creditor, CSA can take action to bankrupt a debtor. Arrears of child support are provable in bankruptcy.

Most registrable maintenance liabilities receive special treatment under the *Bankruptcy Act 1966*. This means they can still be enforced despite the payer's bankruptcy (section 58(5A) Bankruptcy Act). This puts CSA in a different position to other creditors. In addition, a bankrupt is not released from child support or child or spousal maintenance arrears on discharge from bankruptcy (section 153(2)(c) Bankruptcy Act). A liability for child support or child or spousal maintenance arrears continues despite a bankrupt's release from bankruptcy.

CSA may still collect child support, or child or spousal maintenance from a bankrupt payer by negotiating voluntary payment arrangements; by deductions from salary or wages and by intercepting and applying taxation refunds.

CSA may also be asked to participate in other agreements and arrangements under the Bankruptcy Act that are alternatives to bankruptcy, if the bankrupt payer has other debts apart from his or her debt to CSA.

Legislative References

Sections 5(1), 27, 40, 58(5A), 82(1), 122(2)(c), 153(2)(c) and 153(2A), Parts IX and X *Bankruptcy Act 1966*

Explanation

Enforcement against bankrupts

Bankrupts are people who are unable to pay their debts and have been forced into bankruptcy (by a creditor's petition), or declared themselves bankrupt (by a debtor's petition for bankruptcy). The *Bankruptcy Act 1966* is a Commonwealth Act. It applies in all states and territories.

A bankruptcy notice can be issued where the debtor has committed an 'act of bankruptcy'. The Bankruptcy Act sets out the various acts of bankruptcy which can be committed (section 40), e.g. failing to satisfy a warrant of execution (see discussion on civil enforcement action).

Anyone who owes a debt to another person can enter bankruptcy voluntarily by filing a debtor's petition. There is no minimum debt level required before a voluntary debtor's petition can be filed. When the court accepts the petition, the debtor is automatically declared bankrupt.

Where a creditor takes court action the debt must be at least $2000. The creditor needs to file a creditor's petition in the Federal Court. The court can make an order declaring the debtor bankrupt. Once a debtor is declared bankrupt:

- a trustee in bankruptcy will take ownership of most of the debtor's assets;
- creditors are generally unable to take legal action to collect their debts;
- all debts are notified to the trustee, and it becomes their responsibility to sell the assets and distribute any funds among the creditors in accordance with the provisions of the Bankruptcy Act.

There are certain rules as to which creditors are to be paid first:

- the bankrupt is not generally responsible for any debts incurred up to the date of bankruptcy. These become the responsibility of the trustee;
- debts relating to child support and child and spousal maintenance are afforded some concessional treatment under the Bankruptcy Act. CSA may continue to recover these debts even though a payer is

bankrupt;
- the bankrupt is responsible for debts incurred after the date of bankruptcy;
- any property acquired by the debtor after the date of the bankruptcy will generally become a part of the bankruptcy estate for distribution among the creditors for example, lottery winnings.

Other effects of bankruptcy can include:

- losing most assets, including a house (but not furniture, clothing or tools of trade);
- only being able to keep a car up to a prescribed value;
- giving up passports;
- not being able to obtain credit of more than a prescribed value without disclosing the bankruptcy to the financial institution;
- not being able to remain a director of a company, become a director of a company or administer a trust account (e.g. as a solicitor or accountant) during bankruptcy;
- having to make payments to the bankrupt estate from ongoing earnings.

Bankruptcy usually lasts for 3 years, but a debtor can apply to the court to be discharged earlier. Creditors and the trustee can also apply to the court for a bankruptcy to be extended past 3 years.

Debts arising from a child support assessment, or for child or spousal maintenance are not released automatically by a discharge from bankruptcy. The Bankruptcy Act specifies that a bankrupt is not automatically released from these debts at the time of discharge (section 153 (2)(c)). This means that all registrable maintenance liabilities (except for those arising from a parentage overpayment order) will survive the payer's bankruptcy. However, a bankrupt may apply to the Federal Court or Federal Magistrates Court for discharge from debts of these types (sections 27 and 153(2A)).

While the payer remains bankrupt, CSA is able to take action to enforce any child support or spousal or child maintenance arrears that accrued before the payer's bankruptcy.. This enforcement action may include:

- legal action against any property which does not vest in the trustee of the bankrupt. Any property which the payer is entitled to keep can be the subject of proceedings by CSA to try and satisfy a child support debt. However, the property left with a debtor after bankruptcy is usually of very little value and unlikely to produce much towards satisfying any child support debt.
- specific powers such as tax intercepts, salary deduction, payment arrangements and deduction of arrears from salary.
- lodging a claim with the trustee.

After a bankrupt is released from bankruptcy, CSA is free to use all the methods at its disposal to collect the surviving debt (i.e. arrears of child support or child or spousal maintenance).

Proof Of Debt

Upon being notified that a child support debtor has become bankrupt, CSA may lodge a proof of debt with the trustee. It is generally unnecessary to lodge a proof of debt until the trustee asks. The trustee will usually do this only where there is a likelihood of a dividend being paid to the creditors.

CSA can prove in the bankruptcy for all of the payer's debt outstanding at the date of bankruptcy. A debt due under the Registration and Collection Act is a provable debt (section 82(1) Bankruptcy Act). This includes any late payment penalties which accrued up to that date and amounts recoverable from the payer through a registered parentage overpayment order.

The proof of debt should specify the amount being claimed from the trustee (the 'provable debt'). It should also give a breakdown of the amounts of the debt which are for child support and maintenance; parentage overpayment orders; and penalties.

Collection during Bankruptcy

Most liabilities registered under the Registration and Collection Act fall within the term 'maintenance agreement or maintenance order' (section 5(1) Bankruptcy Act). Debts falling within that definition are given some special protection where a debtor becomes bankrupt. The exception is amounts recoverable by CSA from a former payee under a parentage overpayment order. These concessional provisions do not allow CSA to continue to take action to recover penalties or to recover debts arising from a parentage overpayment order.

Administrative Collection

CSA can continue to collect the provable debt for child support, child or spousal maintenance (not penalties or debts arising from a parentage overpayment order) by salary deduction (arrears by auto-withholding) and by intercepting tax refunds. CSA will also collect any ongoing liability for child support, child maintenance or spousal maintenance through salary deductions.

A notice to a third party under section 72A of the Registration and Collection Act is effective against the divisible property of the bankrupt if it was served before the date of bankruptcy. If a notice is served after the date of bankruptcy, it only has effect against any non-divisible property (i.e. property which does not vest in the trustee and remains in the possession and control of the bankrupt).

Voluntary payments

CSA can continue to accept voluntary payments made by a bankrupt during bankruptcy. These payments do not constitute a preference (section 122(2)(c) Bankruptcy Act).

CSA can also continue to credit Non-agency payments during the period of the bankruptcy in respect of debts which are provable in the bankrupt estate.

Legal action

CSA can take legal action to enforce a remedy against the non-divisible property in respect of a debt for child support, child or spousal maintenance (section 58(5A) Bankruptcy Act).

The payee can also take legal action to enforce the debt – see chapter 5.4.7

Amending proof of debt

An amended proof of debt can be lodged at any stage during the administration of the bankrupt estate. If CSA has lodged a proof of debt with the trustee and subsequently collects any part of the provable debt during bankruptcy, it will lodge an amended proof of debt.

Effect Of Discharge

After a discharge from bankruptcy, CSA is still able to recover the child support or maintenance debt relating to the period before the bankruptcy.

The bankrupt may apply to court for a specific order discharging him or her from all or part of the surviving debt (i.e. that part of the provable debt which relates to child support, or child or spousal maintenance) (section 153(2A) Bankruptcy Act). CSA will not discharge the child support or maintenance portion of a registered child support debt unless the court has made an order under section 153(2A).

CSA cannot recover any pre-bankruptcy debt relating to a parentage overpayment order, or any penalties relating to that period, as these debts are not special protected under the Bankruptcy Act. They are automatically discharged upon the bankrupt's discharge from bankruptcy. After the bankrupt is discharged, CSA will vary the child support register to remove any amounts relating to penalties or registered parentage overpayment order that were included in the provable debt, as these are not recoverable at law.

Alternatives to bankruptcy

Creditors can be asked to participate in debt agreements and arrangements under Parts IX and X of the Bankruptcy Act as alternatives to bankruptcy. These arrangements or agreements limit the collection of provable debts.

CSA will not take part in making an agreement under Part IX and is not bound by any Part IX agreement made which affects the collection of amounts payable for child support, child or spousal maintenance that are registered under the Registration and Collection Act (section 185K).

n arrangement under Part X of the Bankruptcy Act is a formal process in which creditors vote on the proposed arrangement. CSA is not bound by any Part X arrangement made which affects the collection of liabilities registered under the Registration and Collection Act (section 229(4)).

Version 1.2

Issued 1 January 2007

< Previous Next >

2.6.4: Kinds of change of assessment decisions

Context

The Assessment Act lists the types of decisions CSA can make when changing an assessment.

Legislative References

Sections 59, 60, 74, 98C, 98S, 112, 119, 151B, 151C and 151D *Child Support (Assessment) Act 1989*

Regulation 9 *Child Support (Assessment) Regulations 1989*

Explanation

The types of decisions that can be made

Where CSA is satisfied that a reason exists and that it would be just and equitable and otherwise proper to change an assessment it can make a decision to change the assessment. CSA can:

- vary the annual rate of child support (section 98S(1)(a)),
- vary the child support percentage (section 98S(1)(b)),
- vary the payer's adjusted income amount, child support income amount or exempted income amount (section 98S(1)(b)),
- vary the payee's child support income amount or disregarded income amount (section 98S(1)(d)),
- vary the calculation of any of the above amounts (sections 98S(1)(c) and (e)) by:
    - substituting a specified amount for one of these amounts, specifying the period of substitution, and indexing the specified amount by the inflation factor (regulation 9(a), (b), and (c)),
    - varying one of the amounts and specify the period of variation (regulation 9(d) and (e)), and
    - where the variation is by a specified amount, indexing that amount by the inflation factor (regulation 9(f)).
- direct that the 'cap' on child support for a payer with a high income does not apply (section 98S(1)(f)(i)),
- direct that the 'cap' on the combined child support liability of 2 payers does not apply (section 98S(1)(f)(ii)),

- vary a factor relating to the calculation of child support where the payer is paying child support to more than one payee (section 98S(1)(g)).

If CSA is satisfied that a change should be made it must make a decision that changes the assessment to better account for the special circumstances of the case. CSA can decide the appropriate level of child support in that case. The decision is not limited to reasons claimed in the application and may be different to the change requested (section 98S(2)).

Contrary decisions

CSA's decision is not limited to reasons claimed in the application and may be different to the change requested (section 98S(2)). CSA can make a decision that has the opposite effect to the change requested. This is referred to as a contrary decision. CSA can either increase or decrease the amount payable.

The legislation does not define the circumstances in which CSA would consider making a contrary decision. However, it can only do so where satisfied that at least one of the 10 change of assessment reasons exist, and where a change would be just and equitable and otherwise proper.

If CSA believes that a contrary decision should be made, it will give the applicant and respondent an opportunity to comment upon the information that may lead to a contrary decision.

*Example*s

Example one

F, a payee applies for an increase to the child support assessment payable by M, the payer because of the costs associated with the special needs of the child A. CSA finds that F has some extra costs because of the A special needs, however, it also finds that M's income has recently reduced, and the assessment is now unfair because of M's income. After discussing the circumstances with both parents, CSA decides to reduce the child support assessment.

Example two

M, a payer, is retrenched from a long term position. After several months, M has some part-time work and also receives a Centrelink benefit. M lodges an estimate of income for the remainder of the child support period, which is an annualised amount of $15,000. CSA reduces M's assessment from the date of M's estimate. M owes $2,000 in arrears of child support. M applies for a reduction to the child support assessment for the period between the date of retrenchment and the date the estimate took effect.

In addition to M's part time income of $100 per week, M has $85,000 invested in a term deposit, and has recently paid off the mortgage on the home which was purchased after separation. F, the payee, has sole care of their three children A, B, and C. F is unemployed, and lives in public housing. CSA finds that although M's income has reduced, M has significant financial resources, and that M could make an increased contribution to the support of A, B and C, by drawing on those resources. After discussing the circumstances with both parents, CSA decides not to reduce M's arrears, and to increase the child support assessment for the next 12 months.

How long should a decision apply?

CSA cannot make a change of assessment decision that affects the child support assessment payable for a day that is more than eighteen months before the date upon which a parent lodged their change of assessment application (section 98S(3B)(a)). In the case of a CSA-initiated change of assessment, CSA cannot make a change of assessment decision that affects the child support assessment payable for a day that is more than eighteen months before the date CSA notified the payer and payee in writing of its intention to change the assessment (section 98S(3B)(b)).

If a court has granted leave under section 112, CSA can make a retrospective change to the assessment for the period specified by the court in the order granting leave (sections 98S(3C) and 112(6)). However, CSA is not obliged to make a change to the assessment for the period the court has granted leave (section 112(8)).

The reasons for a change of assessment may help to determine the duration of a decision. But other factors will also be considered in deciding how long the change of assessment should apply.

CSA will make a decision that produces an appropriate change to the assessment and if possible allows for

future changes in circumstances to be assessed without the need for a further application to change the assessment. If it is likely that future events may affect the assessment it is best to make a decision for a shorter period.

To provide as much certainty and consistency for parents as possible CSA will make decisions which cover the longest period possible, having regard to the circumstances of the case. CSA will take into account the beginning and end of child support periods when making a decision.

Limiting administrative options

Some change of assessment decisions can limit the administrative options available to parents if their circumstances change. CSA will try to make a decision that makes an appropriate change to the assessment and has sufficient flexibility to respond to later changes in circumstances.

CSA will take into account:

- whether the formula assessment will be an accurate reflection of the parents circumstances in the future;
- whether the current circumstances are likely to continue and, if so, for how long;
- the possibility of future events that may be affected by the decision;
- the need to provide some certainty and consistency for parents;
- the type of decision being made.

Decisions that are income amount orders

A decision to change the formula assessment may be an 'income amount order' in relation to one or both parents (section 59). A parent cannot elect to have their child support assessment based on their estimated income if an income amount order is in force for any part of a child support period (section 60(2)).

Where a child turns 18

If the child will turn 18 in the final year of secondary education, the payee can apply to CSA to extend the assessment to the end of that school year (sections 151B, 151C and 151D).

When CSA makes a change of assessment decision, it will consider if the provisions of sections 151B and 151C are relevant. If so, CSA will express the decision to have effect until a terminating event occurs in relation to the child rather than the day before the child's 18th birthday. The change of assessment decision will then continue to apply to the child support assessment after the child's 18th birthday, if the assessment is extended until the end of the school year.

Can CSA change a child support assessment affected by a child support agreement or a court order?

CSA can make a change of assessment decision for any case where there is a child support assessment in force. This includes a case where the assessment has ended (where the assessment remains in force for the days before the terminating event). However, CSA cannot vary the terms of a court order or child support agreement in any circumstances. If CSA's change of assessment decision conflicts with the terms of a court order or child support agreement, the conflicting provisions of CSA's decision will have no effect.

When a court makes an order that affects a child support assessment CSA must:

- amend the child support assessment to give effect to the order (section 119(1)) and
- continue to give effect to the order in any subsequent child support assessment (section 119(2)).

When CSA accepts a child support agreement it must:

- amend the existing child support assessment to give effect to the child support agreement (section 94(1)); or
- make a new child support assessment to give effect to the child support agreement if there is no existing child support assessment (section 93(1)); and
- continue to give effect to the agreement in any subsequent child support assessments (section 95).

If the provisions of a court order and a child support agreement conflict, CSA must give effect to the more recent provisions in any child support assessment (sections 95(5) and 98(1)).

If a court order or child support agreement affects a child support assessment, CSA can change that

assessment by varying any component of the formula that is not set by the agreement or order.

Example

M and F have a child support agreement that varies the child support percentage. M applies for a change of assessment because F's income has increased. CSA makes a change of assessment decision that varies F's child support income.

Example

M and F have a court order that sets F's annual rate of child support. CSA cannot change M and F's child support assessment in any way.

What happens if there is a terminating event after CSA makes a change of assessment decision?

If the assessment ends because of a terminating event

A child support assessment ends when a terminating event occurs and there are no longer any eligible children. This also applies to an assessment subject to a change of assessment decision.

If CSA later accepts an application for a child support assessment for that case (e.g. if the payee reapplies when the child returns to their care) it will make a child support assessment using the usual formula provisions, without regard to the change of assessment decision. The payer and payee are both able to apply for a change of assessment if they believe the child support assessment is unfair and special circumstances apply.

If the assessment continues after a terminating event

A child support assessment will continue if there is a terminating event for one child, but there are other eligible children of the assessment. Where CSA's child support assessment is in accordance with a change of assessment decision it will amend the assessment to give effect to the terminating event for the child. See below for information about the way CSA will amend an assessment subject to a change of assessment decision.

That same child may return to the payee's care within the period affected by the change of assessment decision. If the payee applies to have the child included in the assessment, CSA will add the child, and amend the assessment by reference to the change of assessment decision.

What happens if there is a change of circumstances that affects the annual rate of child support after CSA makes a change of assessment decision?

CSA can amend a child support assessment to give effect to a change of circumstances that affects the annual rate of child support. Where CSA's child support assessment is in accordance with a change of assessment decision it will amend that assessment to give effect to a change of circumstances that affects the annual rate of child support. For example, if the SCO made a decision to set the payer or payee's child support income amount, CSA can continue to use that new child support income amount to calculate the rate of child support for any additional children who are added to that case after the COA decision. See below for information about the way CSA will amend an assessment subject to other types of change of assessment decision.

Amending an assessment subject to a change of assessment decision

A change of assessment decision that sets the annual rate of child support does not prevent CSA from amending the assessment to give effect to the happening of a terminating event, or a change of circumstances that affects the annual rate of child support (section 74). CSA will amend an assessment by applying the normal formula adjustment under the Assessment Act, provided that this is consistent with the change of assessment decision. CSA will do this by:

- adding back or subtracting any identifiable and explicit annual rate adjustments to arrive at what the annual assessment would be without those adjustments;
- applying the formula that would have applied in reverse to arrive at a notional child support income amount (CSIA);
- applying the formula that should now apply to arrive at a notional annual rate;
- adding back or subtracting any identifiable and explicit annual rate adjustments, if appropriate, to

arrive at a new annual rate.

Example

CSA makes a change of assessment decision that sets M's annual rate of child support payable for A to F at $5,000.

M subsequently advises CSA of the birth of their new child B, who is M's relevant dependant. CSA's change of assessment decision did not take into account the fact that M's family was expecting another child.

CSA calculates the appropriate reduction using the above steps:

- Add back or subtract any identifiable and explicit annual rate adjustments.

There are no such adjustments.

- Apply the formula that would have applied in reverse to work out a notional CSIA.

The child support percentage for one child is 18%.

The exempted income for a payer without a relevant dependent child is $13,462.

The annual rate ($5,000) is equal to (notional CSIA - $13,462 x 18%).

Notional CSIA = ($5,000/0.18) + $13,462

Notional CSIA = $41,240

- Apply the appropriate formula to the notional CSIA to arrive at a notional annual rate.

The exempted income for a payer with one relevant dependant under 13 is $24,842 (i.e. $22,480 + $2,362).

The notional annual rate is therefore ($41,240 - $24,842) x 18% = $2,952.

- Add back or subtract any identifiable and explicit annual rate adjustments, if appropriate.

There are no such adjustments.

Therefore the amended annual rate will be $2,952.

However, if the change in circumstances was foreseen and taken into account in the change of assessment decision, it is not necessary for CSA to further amend the assessment.

Example

M advises CSA that they have a child from a new relationship. M is a payer whose child support assessment is set at a fixed annual rate by CSA's change of assessment decision.

The Senior Case Officer who made the change of assessment decision was aware that M was expecting a new child and took this into account in fixing the annual rate of child support. CSA decides that it is not necessary to amend the assessment further to give effect to M's change of circumstances.

Example

M is a payer with a child support assessment payable to F for 3 children (A, B and C). F applied for an increased assessment on the basis of the high costs associated with B's special needs. CSA increased the assessment from $3,000 to $5,000.00 per annum.

A turns 18 and is no longer an eligible child. CSA amends the assessment to give effect to this terminating event CSA does this using the above steps:

- Add back or subtract any identifiable and explicit annual rate adjustments.

CSA subtracts the $2,000 relating to B's special needs.

The notional annual amount is $5,000 - $2000 = $3,000.

- Apply the formula that would have applied in reverse to work out a notional CSIA.

The child support percentage for 3 children is 32%.

The exempted income for a payer without a relevant dependent child is $13,462.

The annual rate ($3,000) is equal to (notional CSIA - $13,462 x 32%).

Notional CSIA = ($3,000/0.32) + $13,462)

Notional CSIA = $22,837

- Apply the appropriate formula to the notional CSIA to arrive at a notional annual rate.
- The child support percentage for 2 children is 27%

The notional annual rate is therefore ($22,837 - $13,462) x 27% = $2,531.

- Add back or subtract any identifiable and explicit annual rate adjustments, if appropriate.

As B is still an eligible child, CSA adds the $2,000 relating to B's special needs.

Therefore the amended annual rate will be $4,531.

Example

If there was a terminating event for B instead, and A and C were the only eligible children, the calculation will be as follows:

- Add back or subtract any identifiable and explicit annual rate adjustments.

CSA subtracts the $2,000 relating to B's special needs.

The notional annual amount is $5,000 - $2000 = $3,000.

- Apply the formula that would have applied in reverse to work out a notional CSIA.

The child support percentage for 3 children is 32%.

The exempted income for a payer without a relevant dependent child is $13,462.

The annual rate ($3,000) is equal to (notional CSIA - $13,462 x 32%).

Notional CSIA = ($3,000/0.32) + $13,462

Notional CSIA = $22,837

- Apply the appropriate formula to the notional CSIA to arrive at a notional annual rate.

The child support percentage for 2 children is 27%

The notional annual rate is therefore ($22,837 - $13,462) x 27% = $2,531.

- Add back or subtract any identifiable and explicit annual rate adjustments, if appropriate.

B is no longer an eligible child, so CSA does not add the $2,000 relating to B's special needs.

Therefore the amended annual rate will be $2,531.

Example

If A, B and C are all still eligible children, but M becomes liable to pay child support to another payee, J, for their child D. M is now liable to pay child support to 2 payees (F and J) for a total of 4 children (A, B, C and D).

CSA makes a new assessment according to the usual formula provisions for D, payable to J.

CSA must also amend M's child support assessment payable to F for the 3 children A, B and C in

accordance with the modified formula provisions for a payer liable to pay child support to more than one payee CSA will do this by applying the above steps:

- Add back or subtract any identifiable and explicit annual rate adjustments.

CSA subtracts the $2,000 relating to B's special needs.

The notional annual amount is $5,000 - $2000 = $3,000.

- Apply the formula that would have applied in reverse to work out a notional CSIA.

The child support percentage for 3 children is 32%.

The exempted income for a payer without a relevant dependent child is $13,462.

The annual rate ($3,000) is equal to (notional CSIA - $13,462 x 32%).

Notional CSIA = ($3,000/0.32) + $13,462)

Notional CSIA = $22,837

- Apply the appropriate formula to the notional CSIA to arrive at a notional annual rate.

Child support percentage for 3 children: 32%.

Child support percentage for 4 children: 34%.

Modified child support percentage: 3/4 of 34% = 25.5%.

(For a payee who has 3 eligible children in a child support assessment payable by a payer who has child support assessments for a total of 4 children)

($22,837 - $13,462) x 25.5% = $2,391 (rounded to nearest whole dollar)

- Add back or subtract any identifiable and explicit annual rate adjustments, if appropriate.

CSA adds the $2,000 relating to B's special needs.

Therefore the amended annual rate will be $4,391.

The payer and payee are both entitled to object to the particulars of CSA's amended assessment, or to CSA's decision to refuse to amend an assessment. CSA will advise both parents in writing of its decision and their right to object.

What happens if a court order is made where a change of assessment is in force?

Although departure orders and child support agreements take precedence over decisions to change an assessment, this does not necessarily mean that CSA must cease giving effect to decisions currently in force. CSA must give effect to the order or agreement, if necessary by amending the assessment. The provisions of the order or agreement replace any conflicting provisions of CSA's change of assessment decision. Any provisions in CSA's change of assessment decision that are not in conflict with the order or agreement will continue to apply.

Version 1.4

< Previous Next >

2.6.1: When can CSA consider changing an assessment?

Context

The change of assessment in special circumstances provisions are in Part 6A of the Assessment Act. This topic explains when CSA can consider changing an assessment.

Legislative References

Sections 98B, 98D, 98K, 98S, 111 and 112 *Child Support Assessment Act 1989*.

Explanation

Administrative formula for child support assessments

CSA uses an administrative formula to make a child support assessment. The administrative formula is explained in chapter 2.4. However, if parents or children have special circumstances, the administrative formula may not provide a fair level of child support. Part 6A of the Assessment Act provides a means for CSA to administratively change a child support assessment in the special circumstances of a case.

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

Change of assessment application from the payer or payee

If a person thinks that they have special circumstances that make their child support assessment unfair, they can apply to CSA for a change to their assessment (section 98B).

A change of assessment application must be made in writing (section 98D). A person can make a change of assessment application by completing a form 'Your Application: changing your child support assessment in special circumstances'. The form lists the 10 reasons that a person can use to make an application for a change of assessment. The form is available from CSA offices or on CSA's website at www.csa.gov.au. The form can be lodged with CSA by mail, in person or by facsimile. In order to make a valid change of assessment application, the person must complete and sign the form. If the applicant is a parent of the child for whom child support is payable, he or she must also complete the financial section of the application form.

Period for which the assessment can be changed

CSA can prospectively change the assessment of child support and may also make a determination changing the assessment for up to eighteen months prior to the date upon which the person lodges his or her change of assessment application with CSA (section 98S(3B)(a)).

If the person applying for a change of assessment wants CSA to consider changing the assessment for a period more than 18 months prior to his or her application, he or she can apply to a court under section 111

for leave. A court may grant leave for CSA to make a change to the assessment for up to seven years prior to the day on which the person applied to the court for leave (section 112(7)). A court may alternatively grant leave for the court to make an order to change the assessment for up to seven years prior to the day on which the application to the court was made, irrespective of what the person applied for under section 111 (section 112(3A)). (See chapter 4.3.2 for an application for amendment of administrative assessment that is more than 18 months old).

Deceased parents

If one party dies while the COA proceedings are underway, CSA may continue to deal with the application, as long as it is satisfied that the deceased parent had a reasonable opportunity to provide relevant information, or his or her representative can provide it on his or her behalf.

There are occasions where a payer or payee may wish to apply for a change of assessment after the other party to the case (i.e. the payee or the payer) has died. CSA can accept and deal with an application made by the surviving party, as long as the deceased party has an executor or administrator of his or her estate who can be given the opportunity to respond to the application.

Similarly, an executor or administrator of the estate of a deceased parent can apply for a change of assessment on the deceased parent's behalf.

CSA-initiated change of assessment

Since 1 July 1999 CSA has been able to initiate a change to a child support assessment where it believes that the income, earning capacity, property and financial resources of either parent is not accurately reflected in the assessment (Reason 8). This is called a 'CSA-initiated change of assessment', or Registrar-initiated change of assessment. CSA cannot initiate a change to an assessment on the basis of any of the other reasons that a payer or payee can use to apply for a change of assessment.

CSA can initiate a prospective change to the assessment of child support and may also make a retrospective determination to change the assessment for up to eighteen months prior to the date upon which it notified the payer and payee of the proposed change (section 98S(3B)(b)). CSA can apply to court for leave under section 112 to make a retrospective determination that changes the assessment for up to seven years prior to the day upon which it applies to the court for leave (section 111(3)).

Can CSA change an assessment if the child support assessment has ended?

CSA can make a change of assessment decision for a child support period that has ended. CSA can also make a change of assessment decision after the child support assessment has ended because a terminating event has occurred. In these ended cases, CSA will consider whether there is a reason to change the assessment that is in force in relation to the days before the terminating event. It is not necessary for there to be arrears of child support on the case.

CSA will treat a change of assessment application for a child support period that has ended, or a liability that has ended, in the same way as a change of assessment application for a current child support period.

Version 1.6

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.6: CSA-initiated change of assessment

Context

CSA can initiate a change of assessment without an application from either parent if it is satisfied that the child support assessment is unfair because of a parent's income, earning capacity, property or financial resources.

Legislative References

Division 3 of Part 6A *Child Support (Assessment) Act 1989*

Explanation

When can CSA initiate a change of assessment?

CSA can initiate a change of assessment without an application from either parent if it is satisfied that the child support assessment is unfair because of a parent's income, earning capacity, property or financial resources (Reason 8) (section 98K and 98L(1)(a)). CSA cannot initiate a change to an assessment on the basis of any of the other reasons that a payer or payee can use to apply for a change of assessment. CSA must also be satisfied it would be just and equitable and otherwise proper to change the assessment (section 98L(1)(b)).

CSA has limited power to make a retrospective decision when it initiates a change to the assessment. CSA cannot change the assessment of child support payable for any day that is more than eighteen months before the day upon which it notifies the payer and payee of its proposal to change the assessment by sending them a summary of information (section 98S(3B)(b)) unless a court has granted leave to make a change for an earlier period (section 112).

Parties to a CSA-initiated change of assessment

The parties to a CSA-initiated change of assessment are the payer and the payee in the case (section 98K(2)).

Summary of information

CSA must notify both parents in writing when it initiates a change of assessment (section 98M(1)). CSA must also serve a 'summary of the information' that it used to form the view that it should change the assessment (section 98M(2)). The summary will include information about the parent's income, earning capacity, property or financial resources that are not currently reflected in the child support assessment; the proposed new child support income amount; and a calculation of the new assessment based on that amount. The summary will contain sufficient detail to enable the payer and payee to comment and respond appropriately. It will not, however, include identifying information (such as business names and locations).

Right to respond

CSA must give both parents an opportunity to provide information for CSA to take into account when making a decision to change the assessment (section 98N(2)). CSA does this by sending each parent a form (Your response. CSA-initiated change to your child support assessment) with the summary of information. If either parent completes the response form, CSA must send a copy of that response and any supporting documents to the other parent (section 98N(2)).

Joint election to stop the proceedings

If a payee is not receiving an income-tested pension, benefit or allowance, the parents can make a joint election to stop CSA from making a decision to change the assessment (section 98P(1)). Parents can do this by completing CSA's form CSA2899 "Joint election from payer and payee to stop CSA initiating a change to the child support assessment". CSA will notify the parents in writing that it will not be making a decision to change the assessment because of their joint election (section 98P(3)).

Each parent entitled to a conference

CSA must give each parent an opportunity to have a conference with the Senior Case Officer making a decision on CSA-initiated change of assessment (section 98Q(2)). However, CSA can decide to refuse to change the assessment without giving either parent a conference.

CSA will offer the applicant and respondent a personal or telephone conference. This can be a joint conference with the other parent, if both parents agree (section 98Q(3)). CSA can also conduct separate conferences for each parent, either personally, or by telephone.

Neither parent can have a representative appear for them at their conference (section 98Q(5)).

CSA not obliged to conduct investigations

CSA can make a change of assessment decision on the basis of the information that it used to form the view that it should initiate a change of assessment, and the responses and any supporting documents that the parents provided (section 98Q(1)(a)). CSA can conduct further enquiries, but is not obliged to do so (section 98Q(1)(b)). If CSA requires further information from either parent, or from third parties, it can issue a notice requiring a person to provide that information (section 161).

Procedural fairness

CSA must deal with a CSA-initiated change of assessment in a way that is procedurally fair. A decision-maker must ensure that a person is aware of any adverse information and that they have an opportunity to be heard and make submissions in support of their case. In addition to providing each parent with a copy of the other parent's response and supporting documents, CSA will also advise each parent of any additional information that it intends taking into account in a way that is adverse to them, and invite them to comment upon that information. This would include information provided by the other parent at a separate conference, or by a third party after the conference.

However, CSA will not provide any further detail about the financial information that led CSA to initiate a change of assessment. CSA will refer to this financial information in the same terms as it was described it in the summary of information.

Making an agreement during a CSA-initiated change of assessment

Parents can make an agreement while CSA is considering making a CSA-initiated change of assessment decision. CSA will deal with the agreement in the same way that it does a child support agreement made while it is considering a change of assessment application from either parent (section 98U(1)).

CSA must give written notice of the decision

CSA must give the parents written reasons for the decision to change an assessment, including the reasons for establishing that special circumstances existed in the case (section 98S(4)). This allows parents to have a clear understanding of the meaning and effect of the decision. CSA will also document its reasons for the type and duration of the decision in the notice of decision.

If CSA fails to give written reasons to either parent the validity of the decision is not affected (section 98S(5)).

CSA must also amend the administrative assessment to give effect to the change of assessment decision and give the payer and payee a written notice of the assessment (sections 75 and 76). The assessment notice must include, or be accompanied by, information about the payer and payee's right to object to CSA's decision, and to apply to the Social Security Appeals Tribunal if they are aggrieved by CSA's decision on the objection (section 76(3)).

If CSA refuses to make a change to the assessment, it must also provide the payer and payee with written reasons for that decision.

Version 1.3

< Previous Next >

2.6.17: Would a change be just and equitable?

Context

Any change made to an assessment must be fair to the children and the parents.

Legislative References

Sections 3, 98C, 98S, 112 and 117 *Child Support (Assessment) Act 1989*

Section 4 *Family Law Act 1975*

Regulation 12A *Family Law Regulations 1984*

Explanation

While the legislation uses the terms 'just and equitable' and 'unjust and inequitable' CSA frequently uses the terms 'fair' and 'unfair' when discussing these concepts.

CSA must be satisfied that it would be just and equitable as regards the child, the liable parent, and the carer entitled to child support before a decision to change the assessment is made (section 98C(1)(b)). CSA will consider whether it is 'just and equitable' to make a particular decision after a reason for a change to the assessment has already been made out (section 117(4)).

In deciding whether a decision is fair CSA will consider the amount and duration of any proposed change and the factors listed in section 117(4) of the Assessment Act which are relevant to a particular case. CSA may give more weight to some factors than to others depending on the case. The factors include:

- the nature of the duty of a parent to maintain a child,
- the proper needs of the child,
- the income, earning capacity, property and financial resources of the child and of each parent,
- the commitment of each parent to support himself or herself, and any other child or person that they have a duty to maintain,
- the direct and indirect costs incurred by the payee in providing care for the child,
- any hardship that would be caused to the child or the parents by the making of, or the refusal to make, a determination,
- any other relevant matters.

The term 'unjust and inequitable' or 'unfair' is associated with four of the reasons for a change of assessment (reasons 4, 5, 8 and 10). Before each reason can be established the administrative assessment must result in an unfair level of child support. This may seem to be duplicated by the need to consider if a decision is fair but it is necessary to establish that an assessment is unfair section 117(2)(c) considering whether a change to the assessment would be just and equitable.

For those four reasons it must first be found that the current assessment is unfair so that the reason is established. CSA then needs to consider whether a proposed decision is both 'just and equitable' and 'otherwise proper'. Where parents have agreed on a particular child support liability CSA is likely to be satisfied that a change to the assessment which reflects this agreement will be just and equitable. However CSA must still decide whether the proposed change is 'otherwise proper'.

The duty of a parent to maintain a child and the proper needs of the child

In deciding whether it is appropriate to change an assessment CSA must consider the parent's duty to support their child.

The duty to support a child applies to all the children of a parent equally. All the children of a parent have equal priority and the Assessment Act does not discriminate between the children of different relationships.

CSA must consider the proper needs of the child and must have regard to 'the manner in which the child is being, and in which the parents expected the child to be, cared for, educated or trained and any special needs of the child' (section 117(6)). Not only are the basic costs of maintaining a child considered but the individual issues of the child are also taken into account.

Not all of the reasons for a change to an assessment are based on the needs of the child. However, in deciding whether a change is fair CSA must consider the proper needs of the child in all cases even if the reason stated in the application is not based on the needs of the child.

In making a decision the fact that a child or carer is receiving an income-tested pension, allowance or benefit must be disregarded (section 117(7)).

Income, earning capacity, property and financial resources of the parents and the child

A formula assessment of child support is based on the taxable income of the parents. A much wider examination of the financial resources of the individual is made when CSA considers a change to an assessment. The income, earning capacity, property and financial resources of both parents and the child are taken into account when CSA considers if it would be fair to change the assessment. This includes any assets owned by or under the control of, or held on behalf of either parent or the child, even where they do not produce income. See reason 8 for more information. This means that, while the individual is entitled to arrange their financial affairs in any legal way, their obligation to pay child support or contribute to the care of their child should not be reduced as a result of those arrangements when considering any of the reasons for a change of assessment.

Once the income, earning capacity, property and financial resources have been identified CSA will consider the extent to which they should affect the assessment. When deciding if a change to an assessment is fair, a parent's actual income in the relevant period is considered, as well as the child support income amount used in making the child support assessment. If a parent's income has changed significantly then this may be a factor in deciding if a change should be made.

If the payee is not a parent of the child for whom child support is payable, that payee has no legal duty to support the child. CSA will therefore not take into account a non-parent payee's income, earning capacity, property or financial resources when considering whether a change to the assessment is fair.

Income that is not considered

In deciding if a change to the assessment is fair, CSA is required to disregard 'any entitlement of the child, or the payee to an income tested pension, allowance or benefit' (section 117(7)).

Direct and indirect costs of providing care for the child and other considerations

In deciding whether a change to an assessment would be fair CSA must consider the direct and indirect costs incurred by the payee in providing care for the child (section 117(4)). In most cases direct costs can be identified and can be independently confirmed.

Indirect costs to the carer in providing care are more difficult to evaluate. The earning capacity of a payee may be restricted by the need to provide care for a child. Issues such as missed overtime, additional hours of potential employment outside school attendance or inability to undertake required travel in a better paid job may be identified.

Once costs have been determined, CSA will consider to what extent the costs affect the position of the payee.

Example

> If a payee's direct and indirect costs are low they might not be considered to significantly affect the payee and therefore not affect any decision to change the assessment.

Other considerations

CSA may also consider other relevant matters apart from those listed in subsections 117(4) to 117(8) (section 117(9)). These other matters are not set out in the legislation but should be consistent with the objects of the

Assessment Act.

Example

If other proceedings in a court likely to affect child support have been, or are likely to be, commenced, e.g. property settlement proceedings, CSA may decide that it would not be fair to change the assessment if such proceedings are in progress.

Hardship caused by the making or refusing to make a change to the assessment

CSA must consider any potential hardship that would be caused to the child and either parent as well as any other child of either parent, when deciding if a change to an assessment would be fair (section 117(4)(g) and (h)) or when refusing to make a decision.

CSA will consider whether the decision limits the capacity to provide necessities for general living or to meet the proper needs of all parties individually and in the family situation.

If the payee is not a parent of the child for whom child support is payable, that person has no duty to support that child. CSA will not collect information about that person's income, earning capacity, property or financial resources, and will not consider whether a change, or refusal to change the assessment would cause that person hardship.

Date of effect

When making a change of assessment decision, CSA may not vary the rate of child support payable for a day earlier than 18 months before the date upon which the application was lodged (if the payer or payee applied for the change of assessment) or the date upon which CSA notified the payer and payee in writing of its intention to change the assessment (in the case of a CSA-initiated change of assessment (section 98S(3B)). The exception is where a court has granted leave under section 112 for CSA to make a retrospective change to the assessment for the period specified by the court in the order granting leave (sections 98S(3C) and 112(6)). However, CSA is not obliged to make a change to the assessment for the period the court has granted leave (section 112(8)).

Apart from this limitation on backdating a decision, CSA has a wide discretion to specify the date of effect of that change. Backdating a decision for any period could result in an overpayment to the payee or arrears payable by the payer. This could cause hardship to that person and may put the ongoing financial support of the child in jeopardy.

When considering whether to backdate a change of assessment decision, CSA will consider the circumstances of the parties involved. These include, but are not limited to:

- the payer's capacity to pay any arrears in addition to their ongoing assessment; or
- the payee's capacity to repay any overpaid child support.

CSA will also consider the circumstances that led to the application, for example:

- whether the application arose from a parent's misstatement of his or her income; or
- whether the parent unduly delayed making his or her application for a change of assessment.

Version 1.4

< Previous Next >

2.6.18: Would a change be otherwise proper

Context

A decision to change an assessment must be 'otherwise proper'.

Legislative References

Section 117(5) *Child Support (Assessment) Act 1989*

Regulation 12A of the *Family Law Regulations 1984*

Explanation

CSA must consider whether it is 'otherwise proper' to make a particular decision when considering an application for a change of assessment (section 117(5)). The impact of the decision on government expenditure (for pensions and benefits) has to be considered.

CSA must consider:

- The nature of the duty of a parent to maintain a child and, in particular, the fact that it is the parents of a child who have the primary duty to maintain the child; and
- the effect that any proposed change would have on the child or payee's entitlement to an income-tested pension, allowance or benefit.

A payee who receives more than the base rate of Family Tax Benefit Part A can receive a certain amount (a threshold amount) of child support from the payer before this affects their rate of payment. Increasing the annual rate of child support will reduce government outlays. Reducing the assessment will increase government outlays on Family Tax Benefit, and CSA must consider whether this would be appropriate (or 'otherwise proper') in the particular case.

Even if parents agree about the rate of child support that should be paid a change to an assessment may not be 'otherwise proper'.

Also, if there are administrative remedies (e.g. estimates of income, non-agency payments) available to the parents it will not normally be 'otherwise proper' to change an assessment.

Example

> A payer, F, has made payments to the payee, M. F later applies for a change to the assessment based on those payments. F has not applied to have those amounts credited as non-agency payments.
>
> If the amounts were credited as non agency payments M is shown as having received those amounts and any amount of Family Tax Benefit Part A at more than base rate would be reduced accordingly. However, if CSA reduces the assessment by the amount of the payments M is not shown as having received the amounts and may receive a higher payment of Family Tax Benefit. The overall contribution that M makes to the support of the children would be the same, but in the latter case, M would receive more Family Tax Benefit. The decision to change to the assessment is not 'otherwise proper'.

CSA must not only consider the amount of the change to the assessment but also the duration of any decision in working out if it is 'otherwise proper'. It may be appropriate to make a short-term decision so the parents can consider an agreement or make other arrangements to reorganise their financial circumstances. It may not be 'otherwise proper' to maintain a change to an assessment for an extended period.

Version 1.3

Issued 24 December 2005

< Previous Next >

2.6.7: Reason 1

Context

A payer or payee can apply for a change of assessment in special circumstances if the costs of maintaining a child are significantly affected by either parent's high costs in enabling the parent to spend time with, or communicate with, the child.

Legislative References

Sections 8A, 98C, 98S and 117 *Child Support (Assessment) Act 1989*.

Explanation

There may be a reason for changing an assessment if in the special circumstances of the case the costs of maintaining the child are significantly affected because of high costs involved in enabling a parent to spend time with, or communicate with, the child (section117 (2)(b)(i)(A)).

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

CSA can decide to change the assessment if the reason is established and it would be just and equitable and otherwise proper to do so.

Who can apply under this reason?

The payer and the payee are both entitled to apply under this reason, even if the assessment is based on a modified formula because the child spends at least 30% of the nights in the care of each parent. The reason can also apply where the payee is not the child's parent, in relation to the costs that the payee or the payer incurs in enabling the child to spend time with, or communicate with, a parent.

Are the costs high?

A parent's costs are high if during a child support period they total more than 5% of the parent's child support income amount (section 117(3)). The costs that CSA considers for the 5% threshold are the parent's costs to enable them to spend time with, or communicate with, the child or children for whom child support is payable and any other child or person the parent has a duty to maintain.

This 5% threshold amount is calculated by:

- dividing the parent's child support income amount* for the period (which is expressed as an annual figure) by 365; and
- multiplying by the number of days in the period.

* In working out the 5% threshold amount, CSA will use the parent's child support income amount for the child support period in which the costs are, or will be incurred. In cases where the administrative assessment is based on a capped income for a parent, the threshold is 5% of the parent's actual child support income and not 5% of the capped income amount. This will be the income for the last financial year that ended before the start of the child support period, unless:

- the parent has elected to have his or her child support based on an estimate of his or her current income (in which case, CSA will calculate the threshold using the parent's estimated income); or
- the parent's child support income amount has been varied by
    - a child support agreement
    - a court order; or
    - a prior change of assessment decision

(in which case CSA will calculate the threshold using the parent's child support income as amended by that agreement, court order or prior change of assessment decision).

CSA will use the following method to calculate whether the parent's costs are high in a case where his or her child support income amount changes within the child support period (for example, because the parent lodged an estimate of his or her income within the child support period):

1. Work out the parent's costs for the whole child support period.
2. Divide the child support period up into separate 'sub-periods' according the dates to which the different child support income amounts (CSIAs) apply.
3. Calculate the number of days in each 'sub-period'.
4. For each 'sub-period', divide the CSIA by 365 then multiply the result by the number of days in the 'sub-period' to calculate the 'sub-period CSIA figure'.
5. Work out the sum of all the sub-period CSIA figures.
6. Are the costs at step 1 more than 5% of the total amount at step 5?
7. If yes, the parent's costs are high.

Other relevant matters

The following factors can also be relevant:

- whether the arrangements for spending time with, or communicating with, the child are as ordered or agreed
- whether the application is made prior to the costs being expended. A prior pattern for spending time with, or communicating with, the child can be considered. Anticipated costs can be taken into account but there must be a reasonable expectation that the costs will be incurred; and
- whether the parent can substantiate the costs.

High costs that significantly affect the ability to provide for a child

If satisfied that the costs are high CSA must decide whether the costs of maintaining the child are significantly affected by those high costs. The extent to which the costs exceed the 5% threshold is relevant. If the costs are only slightly higher than the threshold they might not significantly affect the parent's ability to provide for the child.

A parent's actual income in the relevant period as well as their child support income amount will also be considered. If the parent's income is high and all of their necessary costs are met (including the costs to enable them to spend time with, or communicate with, the child) then the costs, however high, might not significantly affect the parent's ability to provide for the child.

What costs can be included?

The costs included in the change of assessment application must relate to enabling the parent to spend time with, or communicate with, the child rather than to enjoying that time or communication (*Hall and Rushton*

(1991) FLC 92-252). Telephone and internet costs can be considered as well as accommodation and transport (*Gyselman and Gyselman (1992) FLC 92-279*). Transport costs include parking costs; road tolls; train, ferry, taxi or bus fares; airfares; the cost of car hire and motor vehicle expenses. However, the cost of entertainment cannot be included, as this is a cost of enjoying, rather than enabling, the time spent or communication with the child.

Legal costs

Legal costs incurred by either parent to establish, modify, or enforce arrangements can be significant. However, the courts have held that these expenses cannot appropriately be included as a cost of enabling them to spend time with, or communicate with, the child for the purposes of departing from an assessment of child support for a child (*MAV & NTV* [2005] FMCAfam 261 (31 May 2005).

Senior Case Officers must consider each case on its merits but will take into account relevant decisions of courts and tribunals. Consequently, a Change of Assessment application based on legal costs incurred by a parent in establishing contact with a child, is unlikely to succeed.

How are the costs measured?

Some factors that affect the way costs are identified and measured are:

- Motor vehicle costs - When calculating motor vehicle expenses CSA will generally accept that the actual cost (rather than the tax rate, AAA, NRMA, RACQ or other motor association rate) is allowable (*Houlihan and Houlihan* (*(1991) FLC 92-248*). The tax rate is designed for car travel up to 5000 km to take account of the additional costs of acquiring and maintaining a commercial vehicle and is not an appropriate measure for the costs. In considering a parent's actual costs the proportion of use of the vehicle for the purposes of spending time with, or communicating with, the child should be considered.
- Discounted fares and frequent flyer points - a parent is expected to arrange cost effective travel for themselves or the children wherever possible, and this will be taken into account when calculating the costs.
- A parent or child's travel costs that are met via an allowance from an employer or salary sacrifice arrangement (rather than the parent paying for those costs directly), are considered to be the parent's costs if the allowance/fringe benefit is included in the parent's child support income amount.
- Dual purpose costs - if the costs are incurred for dual purposes or mixed-occasion visits such as a wedding, funeral or business trip only a portion of the costs can be considered.
- Costs of food - the cost of food for children is not included (*Gyselman and Gyselman (1992) FLC 92-279*) although the cost of food for the parent on a trip to spend time with the child may be included in extraordinary circumstances.
- Telephone and internet costs - the relevant portion of these costs can form part of the high costs to communicate with the child.
- Accommodation costs - accommodation costs must be reasonable and necessary to enable the parent to spend time with the child without being demeaning. Family-type accommodation is regarded as appropriate rather than a luxury hotel.
- Documentary confirmation of costs - The costs should be verified by appropriate documentary evidence such as hotel/motel receipts, credit card statements, petrol receipts and itemised telephone bills. Costs must be reasonable and in proportion to the income of the parent.

Distinguishing the costs from necessary commitments for self-support

In some applications for a change to an assessment the costs claimed relate to accommodating the children at the payer's home. However, the costs must relate to the child rather than to the parent.

Example

> The difference between renting a one-bedroom unit and a 3-bedroom unit to provide accommodation during substantial periods spent with the child.

Any costs relating to a parent's self-support must be separated from their overall costs. CSA will consider the proportion of the accommodation that relates to the children and the frequency of the time spent together.

Do the high costs make it 'just and equitable' to change the assessment?

Once the high costs are established, and the fact that the costs significantly affect the applicant is accepted,

CSA must consider whether it would be just and equitable to change the assessment. The decision must also be otherwise proper.

In considering if it would be just and equitable to change the assessment CSA will consider any orders made regarding the management of spending time with, or communicating with, the child, especially where the order directs that costs be shared. CSA will also consider other elements including:

- the child's need to be supported by, and spend time with, or communicate with, both parents;
- the contribution each parent makes to the costs;
- the necessary commitments of each parent relative to their respective capacity to contribute;
- any hardship which would be caused to either parent; and
- any other relevant factor.

The importance of spending time with, or communicating with, the child has to be balanced against the primary purpose of the Assessment Act in ensuring that children receive a proper level of financial support from both parents.

If the parent's current income is different from his or her child support income, this will also be a factor for CSA to weigh up in considering whether it would be just and equitable to change the assessment

The kinds of decisions that reflect the high costs

It may not be appropriate to deduct all of the costs over the 5% threshold from the child support payable because this would shift the whole of the obligation to pay the costs of enabling a parent to spend time with, or communicate with, the child, from one parent to the other.

CSA will usually increase a parent's exempted income amount to reflect the amount that that person would have to earn to meet the costs that exceed the 5% threshold (*Houlihan and Houlihan (1991) FLC 92-248*). This allows the parent to use other administrative options such as estimates of current income and to have changes in care taken into account if necessary. This approach will not produce a fair result in every case but it may be used when this reason is the only reason that a change of assessment is being considered. An exempted income is likely to produce a fair result where other elements of the formula remain consistent.

Because costs in excess of the threshold are measured over the child support period, these costs must be adjusted to an annual figure before being grossed up to obtain a pre-tax figure. This is done by dividing the costs in excess of the threshold by the number of days in the child support period and multiplying that amount by 365. CSA will then gross up the parent's annualised costs in excess of the 5% threshold, using the appropriate marginal tax rate based on the parent's taxable income.

In other cases the circumstances of the case may indicate an alternative type of decision especially if there are a number of reasons included in the application for a change.

Duration of a change of assessment for this reason

Where there is a decision to change an assessment because of the high costs of enabling a parent to spend time with, or communicate with, the child, the length of time of the decision will apply depends on the circumstances of the case. If there is a regular pattern with consistent expenditure, the decision may be of a longer duration than a case where it is irregular and expenditure varies greatly from period to period. Where a pattern is not established but there has been an order of a court in relation to the issue of time spent with, or communication with, the child, a decision for a shorter duration might be made.

Version 1.7

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.16: Reason 10

Context

A payer or payee can apply for a change of assessment in special circumstances if the child support assessment is unfair because they earn, derive or receive additional income for the benefit of their resident child.

Legislative References

Sections 98C, 98S(3A), 117(2)(c)(iii) and (iv), 117A and 117(4) to 117(9) *Child Support (Assessment) Act 1989*

Explanation

There may be a reason to change an assessment if, in the special circumstances of the case, the application of the formula assessment results in an unjust and inequitable level of child support to be paid by the liable parent because part of the child support income amount was earned, derived or received by the parent for the benefit of a resident child(ren) of the parent (section 117(2)(c)(iii) and (iv)).

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

A parent can lodge an application to change the child support assessment on the basis that additional income they have earned (derived or received) for the benefit of a resident child in their current household results in an unjust and inequitable level of child support.

The Assessment Act defines 'resident child' and 'additional amount' (sections 117A(1), (2) and (3)). It also sets a ceiling on the amount by which the child support income amount of the parent can be reduced (section 98S(3A)).

The reasons for the change require that:

- the income is for the benefit of a resident child;
- there be an additional amount of the applicant's child support income amount;
- the additional income was earned, derived or received by the applicant; and
- this income results in an unfair or unjust and inequitable level of child support.

Resident child

A 'resident child' is (section 117A) a child who:

- normally lives with the parent;
- is less than 18 years of age;
- is not a member of a couple;
- is a child of the parent, or of a current or previous partner of the parent; and
- is not a child of which both the payee and the payer are the parents.

The definition excludes nephews, nieces or any child who is not a child of one of the members of the couple. 'Parent' has its ordinary meaning, extended by the definition in section 5 of the Assessment Act to include an adoptive parent, or a parent as the result of an artificial conception procedure.

An applicant should make clear in their application who the parents of the resident child are, and if they are not a parent of the resident child, what their relationship is or was to one of the resident child's parents.

A child who is the payer's relevant dependent child can also be a resident child, as long as the payee is not the child's other parent.

Normally lives

The term 'normally lives with' is not defined in the Assessment Act. CSA will apply a common sense interpretation of at least 50% of the time over a 12-month period as the basis for accepting that a child 'normally lives with' a parent. This does not exclude an extraordinary circumstance involving less than 50%.

Member of a couple

The term 'member of a couple' is defined (section 5) as meaning:

- a person legally married to another person and not living apart and separately from them on a permanent basis; or
- a person living with another person of the opposite sex as their partnpartner on a genuine domestic basis although not legally married.

If questions are raised about whether a parent meets the definition they may need to provide evidence to CSA that they are or were a member of a couple.

A person does not have to have a current partner to apply under this reason. The resident child can be a child of the applicant's former partner, if the child remained with the applicant after the applicant and his or her partner separated (sections 117A(1)(d)(ii) and 117A(2)(d)(ii)).

Additional amount of child support income

An amount of income will not be accepted as an additional amount if:

- the amount was earned as part of a pattern of earnings established before the child became a resident child; or
- in the case of a new born child, before the parent could reasonably have been aware of the pregnancy that resulted in the birth of the resident child; or
- it was reasonable to expect that the additional amount that was earned would have occurred in the ordinary course of events (section 117A(3)).

The 'additional amount' needs to be clearly identified in the application as a separate and quantifiable amount within the parent's total child support income amount. That amount could be part of the parent's taxable income, or supplementary amount that includes exempt foreign income, rental property losses or reportable fringe benefits.

An 'additional amount' can come from a variety of sources, e.g. overtime, a second job, a career change to a new higher-paid job taking on extra responsibilities or additional workload that result in extra income (such as increased commission payments), or from investment income. Additional allowances paid to members of the Australian Defence Force that are directly attributable to the resident child (for example a higher rate of District Allowance) can also be considered as an 'additional amount'.

For the self employed, an 'additional amount' may be earned, derived or received through extending the opening or closing hours of their business, increasing production or developing new markets or new products outside of normal business operation.

If the parent regularly worked overtime (voluntary or mandatory) or already had a second job before beginning the new relationship additional income cannot be claimed as specifically 'for the benefit of the resident child'. This includes pre-existing sources of commission, bonuses, etc.

Timing of events

The question of timing (when the additional income began to be earned) is crucial in establishing this reason. A parent will need to establish (e.g. by means of a sequence of pay slips, a letter from their employer, or some other evidence of 'before and after' income) that the additional income was specifically earned, derived or received for the benefit of the resident child. Evidence of the parent's earning history is needed along with the nature of the change that justifies the child support assessment being reduced. A parent needs to show that the claimed amount is 'additional' or outside any established pattern.

The parent's previous job or occupation will be relevant if they claim they have changed to a better paying job to support a resident child.

In considering whether to exclude an additional amount earned before the applicant 'could reasonably be expected to have been aware of the pregnancy that resulted in the birth of the (resident) child', what is 'reasonable' will be based on when the pregnancy was determined.

Additional amounts that would have occurred in the ordinary course of events

An increase in income that would have happened in the ordinary course of events will not give a reason to change an assessment even if the increase coincides with a child becoming a resident child.

Where a parent receives a yearly increment or some other form of anticipated increase that happens to coincide with the advent of a 'resident child' this will be straightforward. Where the additional income is due to promotion further evidence may be needed to establish that the parent sought the promotion for the benefit of a resident child. CSA can consider whether the parent would have been promoted in any event.

CSA will not consider any alterations to a pattern of income that it is reasonable to expect would have occurred even if the re-partnering (and establishment of a resident child) had not occurred.

Where an assessment might be unfair or 'inequitable and unjust'

Even if an additional amount of a parent's child support income amount was earned for the benefit of a resident child an assessment cannot be changed unless it produces an inequitable and unjust result.

In deciding whether there is an 'inequitable and unjust' result CSA may consider the total financial circumstances of a parent and determine whether the child support income amount correctly reflects their capacity to support their children. CSA will compare any change in the parent's income against any change in the parent's commitments and expenditure at the time of their application.

This element of the reason, in relation to whether the assessment results in an 'unjust and inequitable' level of child support, is narrower than the 'just and equitable' elements under section 98C of the Act. The amount of the additional amount of income in relation to the total child support income amount may be relevant.

Example

> CSA may decide that while a parent does have an additional amount of income it is of such a minimal amount that it does not mean that the assessment is unfair or unjust and inequitable overall.

Privacy issues regarding the financial circumstances of a third party

An application under this reason may require a broader range of issues to be taken into account than applications under other reasons because CSA needs to consider the income and financial circumstances of the parent's household, and not just the parent. If there are other sources of income that already (or could) adequately provide for a resident child it would not be just and equitable to reduce the parent's child support income amount.

CSA can consider the following in deciding if a change is fair:

- the source and amount of any benefit paid to or in respect of the resident child (e.g. Centrelink payments),
- whether and how much child support is being paid for the resident child,
- the cost of caring for the resident child,
- the income and resources of the parent's partner,
- whether the assessment has already been adjusted to take the resident child into account (i.e. as a relevant dependant child),
- whether any other adult who has a legal duty to maintain the resident child has a capacity to do so,
- the total expenditure outlaid to maintain the household, and
- any assets and other resources held by, or available to, all the members of the household.

Privacy considerations

A parent requires the approval of their partner to provide detailed financial information relating to their partner. The change of assessment application form includes a declaration that must be signed by the parent stating that they have obtained consent from third parties to use their information. CSA will not accept an

application that contains details of a partner's financial circumstances unless the declaration is signed.

If the parent's partner is the parent of the resident child, the partner will be asked to provide full child support details relating to the resident child. CSA can also consider any information held by CSA about child support matters relevant to the resident child.

See chapter 6-30 on Privacy, secrecy and POI for further information on privacy.

'Just and equitable' and 'otherwise proper' - the decisions that CSA can make

Once a parent has established a reason to change their assessment CSA must consider whether it would be fair or just and equitable in relation to the children of the assessment, the payer and the payee and the community to make a particular decision (sections 98C(1)(b)(ii), 98C(3) and 117(4) to 117(9)).

CSA's decision will depend on the circumstances of the case and any other reasons being considered.

A decision varying the child support income amount of a parent must not reduce their child support income amount by more than 30% (section 98S(3A)).

When making a decision under this reason CSA will determine the parent's actual income amount. This may be different from parent's child support income amount. CSA will set out the basis for determining the actual income amount in the decision.

A decision to reduce the applicant's child support income amount by up to 30% for this reason does not prevent CSA from further reducing the amount beyond 30% as part of the same decision if there is another reason(s) for a change to the assessment and CSA is satisfied that a further reduction would be just and equitable and otherwise proper.

Version 1.3

< Previous Next >

2.6.8: Reason 2

Context

A payer or payee can apply for a change of assessment in special circumstances if the costs of maintaining a child are significantly affected by the child's special needs.

Legislative References

Sections 98C(2), 98S and 117 *Child Support (Assessment) Act 1989*

Sections 71C and 71D *Child Support (Registration and Collection) Act 1988*

Explanation

What are 'special needs'?

There may be a reason for changing an assessment if in the special circumstances of the case, the costs of maintaining a child are significantly affected because of the special needs of the child (section 117(2)(b)(i)(B)).

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' *(Gyselman and Gyselman (1992) FLC 92-279)*.

A parent can make an application to change the child support assessment if they consider that the cost of meeting the special needs of a child significantly affects the costs of maintaining the child.

The term 'special needs' is not defined in the legislation. There must be some evidence that the needs of the child relate to a condition or disability that is out of the ordinary. These special needs can be because of a physical, mental or learning disability or because of a special talent or ability of the child (*Lightfoot v Hampson (1996) FLC 92-663*).

Examples

> A condition that is distinct from the 'usual' childhood illnesses suffered by a child may be a condition that is 'out of the ordinary'.
>
> A long-term or short-term physical, mental or learning disability may constitute such a condition.
>
> In some cases, needs which arise from such special talents that are likely to lead to particular success or prominence may be considered 'special needs'. Gifted sports people could be considered to have special

needs (*Blamey and Blamey (1995) FLC 92-554*).

A child's special needs will often be a fact accepted by both the payer and payee. However, in cases where there is a dispute, the person who seeks to rely on this reason will need to provide documentation, such as medical evidence, to substantiate their claim. Similarly, CSA will require the parent making the application to provide evidence of the net expenditure associated with the special need, unless it is clear that the respondent accepts the other parent's claim.

When are the costs of maintaining a child significantly affected?

If a child has special needs CSA will consider whether the costs of maintaining the child are higher because of the costs related to the special needs. The special needs must involve a cost that is additional to the normal needs of a child that are expected to be met from the child support assessment. For an assessment to be changed the costs must result in a need for additional financial support in addition to that provided by the child support assessment.

The fact that the child suffers from a severe disability or a special ability does not, in itself, mean that an assessment should be changed. The overall test is whether the costs of supporting that child are significantly different from those faced by most other parents. If the costs are only slightly higher than usual they might not be considered to significantly affect a parent's ability to provide financial support for the child.

In some cases, a child may suffer from an illness that is easy and relatively inexpensive to treat but, because of complications, the expenses associated with that condition are significant in the short-term. In other cases, the child may have a disability but the costs associated with that disability are nominal in terms of the parent's out-of-pocket expenses. This may be because the parent receives significant subsidies from the government in relation to medication, therapy or treatment or because another person meets the expenses associated with the condition.

What is fair or 'just and equitable' in terms of special needs?

If a special need exists and it significantly adds to the costs of maintaining a child CSA must decide on the amount by which those costs exceed the 'usual' or expected costs. CSA will consider the financial circumstances (including assets) of a payer to decide if they have the capacity to meet the additional expenses as well as the assessed rate of child support.

CSA will also consider the financial circumstances of the payee to decide if the child's needs, including the additional costs, can be met by the assessed rate of child support (as might be the case where the payer is paying a high rate of child support).

Either parent may be able to contribute towards the child's additional expenses taking into account their individual financial circumstances.

Entitlements that CSA does not take into account

Some parents may receive assistance such as a Carer Allowance from Centrelink. Carer Allowance is intended to compensate the carer for their indirect costs in providing personal care for the child. It is not a payment to assist with the direct expenses of the child's disability.

CSA will not offset or consider any payments of Carer Allowance (previously known as 'child disability allowance') that a parent receives from Centrelink because they provide care for a child with a disability.

The kinds of changes to an assessment that reflect the special needs of a child

The kind of decision made will depend upon who is bearing the costs of the child's special needs. The additional costs of maintaining a child with special needs should be readily quantifiable. If the payee is meeting those expenses, it would usually be fair to apportion a percentage of responsibility for those costs to each parent according to their financial capacity, and increase the assessment by the annual amount of the payer's share of the costs.

Where a payer is bearing the costs of the child's special needs, it may be appropriate to adjust their exempted income amount to reflect the amount that they would have to earn to meet the costs of the special needs of the child (using the method in *Houlihan and Houlihan (1991) FLC 92-248*). This allows the parents to use other administrative processes if necessary such as an estimate of current income. This approach will not produce a fair result in every case as the value of the financial relief to the parent can be low but it may

be used when this reason is considered in isolation from other reasons. An exempted income is likely to produce a fair result where other elements of the formula remain consistent.

The final decision will depend on the circumstances of the case and any other reasons under consideration.

The effect of a change to an assessment on any means-tested assistance from government

Generally, any child support received by a payee is considered to be 'maintenance', and will affect the payee's entitlement to Family Tax Benefit Part A at more than the base rate.

Maintenance that is paid specifically for the child's disability expenses is not assessable under the maintenance income test. However, not all 'special needs' costs are considered disability expenses for Family Tax Benefit purposes. Disability expenses are those relating to a physical, psychological or intellectual disability or a child's learning difficulties. If CSA decides to increase a child support assessment based wholly or partly on the child's special needs, the notice of decision will clearly identify the component that relates to those special needs. The payee can then provide that information to Centrelink and ask it to consider whether that amount should be disregarded for Family Tax Benefit.

How long will a decision to change the assessment under this reason apply?

Where there is a change to an assessment because of the special needs of a child the period of time the decision covers will depend upon how long the child is likely to require additional financial support. If a child has an ongoing or chronic illness or condition the decision to change the assessment may be for a long time. If the special need relates to a short-term condition (e.g. orthodontic work or treatment for an injury or a specific activity such as a sports camp) the change may be for a shorter time.

The interaction of reason 2 and the provisions for credit of non-agency payments

A payer who makes certain types of payments to third parties, including fees for essential medical and dental services for a child, is generally able to have those payments credited towards their liability to pay child support for that child, even if the payee did not intend that the amount be for child support. However, this option is not generally available if CSA has already taken into account those costs met by the payer in making a decision to reduce, or refuse to change the assessment. (See chapter 5.3 - Non-agency payments and offsetting liabilities for further information.)

Version 1.3

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.9: Reason 3

Context

A payer or payee can apply for a change of assessment in special circumstances if the costs of maintaining a child are significantly affected by high costs of caring for, educating or training the child in the way both parents intended.

Legislative References

Sections 98B(1), 98C, 98S, 117(2)(b)(ii) and 117(4) to 117(9) *Child Support (Assessment) Act 1989*.

Sections 71C and 71D *Child Support (Registration and Collection) Act 1988*.

Explanation

An assessment can be changed if in the special circumstances of the case, the costs of maintaining a child are significantly affected because the child is being cared for, educated or trained in the manner that was expected by the parents (section 117(2)(b)(ii)).

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

A parent can make an application to change their child support assessment if they consider that the cost of meeting the parents' expectations significantly affects the costs of maintaining the child.

The parent applying for a change to their assessment has to show that there are additional costs involved in maintaining the child because of an agreement between the parents about how the child will be maintained. The ordinary costs incurred in raising a child will not be considered under this reason as those costs do not set a particular case apart from other cases in a way that establishes special circumstances.

Example

> The usual costs associated with a child attending a government school would not normally constitute special circumstances.

When is the cost of maintaining the child significantly affected?

Once the costs associated with educating, maintaining or training a child in the manner expected by the parents have been calculated CSA will consider the extent to which those costs significantly affect the capacity of the parent to support the child.

Example

> If the costs of sending a child to a particular school are only slightly higher than those associated with attending a government school they might not be considered to significantly affect a parent's capacity to

support the child (sections 98B(1) and 117(2)(b)(ii)).

Is the child being cared for, educated or trained in a manner expected by his or her parents?

The most common application for this reason involves the payment of private school fees and whether the child is being educated in a manner expected by the parents. However, this reason can apply to education and/or training outside the school environment.

In cases involving school fees CSA will generally determine whether both parents agreed to the child being educated in the way outlined in the application. CSA will also consider the financial situation of both parents. The fact that a payer can afford to pay the fees, or is a wealthy person, is not in itself a reason for imposing a liability to contribute to school fees (Mee v Ferguson (1986) FLC 91-716).

Where a payer agreed to the child attending a private school they will be liable to contribute to the fees to the extent that they have the financial capacity. Where a payer has not agreed to the child attending a private school they will not be liable to contribute to the fees unless there are reasons relating to the child's welfare that mean that the child should attend a private school (and the costs would then relate to the child's special needs - see reason 2).

In deciding whether the reason is established CSA will consider the type of education intended by both parents for the child, rather than any particular school intended by the parents (*Wild v Ballard (1997) FLC 92-771*).

CSA will also consider the circumstances at the time of separation. If the child was attending a particular school, or was participating in a particular extra curricular activity, then this element will usually be established. If not, evidence of the parents' expectation would need to be provided, e.g. the payment of fees. The parents' expectation can be created at any time, not just during the period that the parents lived together.

What is 'just and equitable' when considering the expectations of the parents?

If the reason is established CSA must consider whether it would be just and equitable to the child, the payer, and the payee and otherwise proper to make a particular determination (section 98C(1)(b)(ii)).

CSA will consider the financial circumstances of the other parent and decide whether the child's needs, including the additional costs, can be met by the assessed rate of child support (as can be the case where the payer is paying a high rate of child support). The other parent may also be able to contribute towards the child's additional expenses taking into account that parent's circumstances.

The importance of maintaining the expectations of both parents and the primary purpose of the Assessment Act in ensuring that children receive a proper level of financial support from both parents has to be balanced against the capacity of either or both parents to meet those expectations. Changes to the financial circumstances of either parent may mean that earlier expectations for a child's care are no longer possible.

Changes that reflect educating the child in the manner expected

CSA will consider the financial circumstances (including assets) of the payer in deciding if they have the capacity to meet the additional expenses as well as the rate of child support already paid. CSA must consider the effect of any decision on the amount of Family Tax Benefit received by the payee, bearing in mind that it is the primary duty of the parents to support the child (section 117(5)).

The costs of educating or training a child in accordance with the expectations of the parents are usually readily identifiable and verifiable. If the payee is meeting the additional costs, a decision will usually increase the child support liability by an appropriate proportion of those additional costs. The length of time and stability of the education costs can determine the period of time that any change to the assessment will apply.

Where the payer is meeting the costs, it may be appropriate to reduce the assessment. However, another alternative is to increase the assessment and for the payer to claim credit (as non-Agency payments) for any payments that they make directly to third parties in relation to training and education costs for the child. Where this occurs, CSA will be satisfied that the parties mutually intended that these payments were for child support for the child.

The interaction of reason 3 and the provisions for credit of prescribed non-agency payments

A payer who makes certain types of payments to third parties, including child care costs or fees charged by a school or preschool for a child, is generally able to have those payments credited towards their liability to pay child support for that child, even if the payee did not intend that the amount be for child support. However, this option is not generally available if CSA has already taken into account those costs met by the payer in making a decision to reduce, or refuse to change the assessment. (See chapter 5.3 - Non-agency payments and offsetting liabilities for further information.)

Version 1.2

Issued 30 August 2004

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.10: Reason 4

Context

A payer or payee can apply for a change of assessment in special circumstances if the child support assessment is unfair because of the child's income, earning capacity, property or financial resources.

Legislative References

Sections 98C, 117(2)(c)(i) and 117(4) to 117(9) *Child Support (Assessment) Act 1989*.

Explanation

The usual formula assessment provisions do not take into account the child's personal income when calculating the rate of child support payable by a parent for that child.

CSA cannot end a child support assessment because of the income earned by an eligible child. However, there may be a reason for changing an assessment if in the special circumstances of the case, the administrative assessment of child support results in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property and financial resources of the child (section 117(2)(c)(i)).

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (Gyselman and Gyselman (1992) FLC 92-279).

Each case has to be considered in the light of the individual circumstances of the child and the parents. Substantial income and/or assets, whether or not directly under the control of the child, will be relevant when deciding whether the assessment is unfair.

A parent can make an application to change the child support assessment if they consider that the financial resources of the child results in an unjust and inequitable level of child support under the child support assessment.

CSA will consider the financial resources of the child in the context of the income and asset position of both parents. In most cases there will be some overlap between these considerations and that of consideration of what is 'just and equitable'.

Minimal earnings

Significant income

'Just and equitable', or fair, and the kinds of decision that can be made

Minimal earnings

Minimal earnings are generally not regarded as a reason to change an assessment of child support (*Mee and Ferguson (1986) FLC 91-716*).

CSA will not usually consider that the following types of income affect the financial responsibility of the parents:

- income derived from casual work in holidays or after school hours,
- gifts of small amounts of money,
- pocket money.

CSA must disregard an income-tested pension, allowance or benefit received by the child (or by another person on behalf of the child) when considering that child's income, earning capacity, property and financial resources (section 117(7)).

Significant income

If a child receives more than a minimal income (i.e. a 'significant income', CSA will consider whether that income is sufficient to warrant a change to an assessment. This will depend upon the income of the child, the financial circumstances of the parents, the amount of child support payable under the assessment and the circumstances of the case. However, as a guide, CSA will not be satisfied that a child's income is sufficient to warrant a change to the assessment unless that income is regular and exceeds the equivalent of the Youth Allowance payable to a child under 18 years of age living at home plus the income free threshold applicable to students/New Apprentices. This means that as at August 2007, a child would need to earn or receive a weekly amount of $213.25 or more for the earnings to be considered so significant as to be capable of affecting the assessment.

CSA will also consider the needs of the child including the costs incurred by the child, or the payee, in earning the income, e.g. transport and clothing costs.

Example

> Where a child earns $230 per week but incurs high transport costs, and the payer has an adequate disposable income, it might not be considered fair to change the assessment.
>
> If the payer has a low income and the payee is in a comfortable financial position, then it might be considered fair to change the assessment.

'Just and equitable', or fair, and the kinds of decision that can be made

If there is a reason to change the assessment CSA must consider whether it would be fair to the child, the payer, and the payee to make a decision to change the assessment (sections 117(4) to 117(9)).

Where the assessment covers a number of eligible children, the self-supporting income of one child may be sufficient to establish the reason in respect of that child. It may be fair to reflect the income of the child by reducing the child support percentage that will reduce the total child support payable. Alternatively the disregarded income amount of the payee could be adjusted.

Where there is a change to the assessment due to the income, earning capacity, property and financial resources of the child, the change will usually have effect until the child turns 18, or the end of that school year.

The decision will depend on the circumstances of the case and any other reasons under consideration.

Version 1.4

Issued 3 August 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.11: Reason 5

Context

A payer or payee can apply for a change of assessment in special circumstances if the child support assessment is unfair because the payer has paid or transferred money, goods or property to the child, the payee, or a third party for the benefit of the child.

Legislative References

Sections 98C, 98E, 98S,117(2)(c)(ii) and 117(4) to 117(9) *Child Support (Assessment) Act 1989*

Regulation 5D *Child Support (Registration and Collection) Regulations 1988*

Explanation

CSA can decide if there should be a change to an assessment when there are special circumstances because of a payment of money, or transfer or settlement of property made (or to be made) by the payer (section 117(2)(c)(ii)). The payment or transfer can be to the child, the payee or to any other person for the benefit of the child.

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (Gyselman and Gyselman (1992) FLC 92-279).

Parents can make an application to change their child support assessment if they think that a payment or transfer of property that has been made, or is to be made, should be considered. The parent needs to show that the payment or transfer results in an unjust and inequitable level of child support under the child support assessment.

The child support scheme provides that payment of child support shall be made by periodic payments to a payee for the day-to-day care of a child. The payee then determines how that money is spent. However, there may be cases where payments have been made for the benefit of a child, outside the child support assessment, that should be taken into account when deciding how much child support should be paid.

Payments for the benefit of a child can include:

- payments prescribed under the 'non-agency payment' provisions (Regulation 5D of the Registration and Collection Act),
- other payments for the benefit of the child,
- payments made during a period when child support wasn't collected by CSA that exceed the child support liability,
- a transfer or settlement of property made for the benefit of the child, made to the child, the payee or to a third party.

The value of a payment or transfer should be able to be identified.

Unjust and inequitable

Transfer or settlement of property

How does this reason relate to non-agency payments?

The kinds of decisions that can be made

Unjust and inequitable

If special circumstances are established, CSA will determine if the assessment is unjust or inequitable because of the special circumstances. The question of unfairness depends on the particular facts of the case.

An uninvited, voluntary or excessive payment for the benefit of the child by a parent, outside the child support assessment, should not affect the payee's entitlement to receive child support to meet the day-to-day needs of the child (*Strauss and Strauss (1998) FLC 92-797*). A parent is not legally required to pay more than the amount set by the child support assessment. However, a parent may choose to pay additional amounts of child support without any expectation of a change being made to the assessment.

CSA will consider the amount of child support payable under the assessment, the amount of the payment or transfer and the requirement that children receive periodic payments for their day-to-day needs.

Although a payment might have been made prior to an assessment being raised it does not prevent CSA deciding that assessment is unfair.

Transfer or settlement of property

Any transfer or settlement of property has to be looked at in relation to any order made by a court or any agreement between the parents regarding property. CSA will avoid undermining the property settlement or any related agreement entered into by the parents. Therefore, CSA will not be satisfied that a transfer of property to the other parent was made for the benefit of the child, unless the order or agreement specifically identifies the proportion and states that the transfer was made for the benefit of the child.

CSA will consider any agreement or order that provides for the children, but it is not, in itself, conclusive (*Sloan and Sloan(1994) FLC 92-507*). Where express provisions have been made, it may be necessary for a court to consider the matter if the change of assessment process cannot properly consider all the relevant factors.

Where there has been an informal distribution of assets, the change of assessment process should not operate as a means of clarifying the terms of the agreement, or intentions of the parents, in respect of the arrangement. In these cases, CSA will refuse to make a change of assessment decision as the issues are too complex (section 98E).

However, in cases where the facts are simple, an application for a change to the assessment can be successful and the assessment can be changed to recognise the property settlement.

How does this reason relate to non-agency payments?

An application to credit a non-agency payment may be a more suitable way to recognise that payments have been made. (See chapter 5.3 - Non-agency payments and offsetting liabilities for more information.) However, the credit of a non-agency payment or a refusal to credit does not necessarily mean that an application for a change to the assessment cannot be made (*Kornacki and Lynch (1998) FLC 95-101*). In that case a payment of school fees in advance made prior to the commencement of the child support liability provided a reason to change the assessment.

It may be more appropriate to apply for a change to an assessment (rather than the credit of a non-agency payment) if the parent is seeking an adjustment to their assessment for the future and for ongoing support rather than an immediate credit for payments that have been made. There may be other situations where the payment made does not qualify as a non-agency payment, e.g. the payment was not made during a period when child support was collected by CSA.

If a payer has uncredited amounts for prescribed non-agency payments the payer can seek further relief through an application for a change to the assessment. The facts of the case have to be examined to see if the payment will be fully credited or credited in part or not at all. The value of the payment, the amount of the assessment and any credits recognised as non-agency payments need to be examined.

The kinds of decisions that can be made

If the reason is established CSA must consider whether it would be just and equitable to the child, the payer, and the payee and otherwise proper to make a particular decision (98C(1)(b)(ii)).

It may be fair to reflect the amount of the transaction by reducing the child support percentage and therefore reducing the child support payable. Alternatively the exempt income amount of the payer could be adjusted or

an annual amount of child support set.

Generally, in cases where there is a change to the assessment in relation to the payment of money or transfer of property, the change will only affect the assessment for a short period. In determining whether the change should continue until the child turns eighteen, CSA will consider the reasons for the transaction. The decision will depend on the circumstances of the case and any other reasons under consideration.

Version 1.2

Issued 30 August 2004

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.12: Reason 6

Context

A payee can apply for a change of assessment in special circumstances if the costs of maintaining a child are significantly affected by the payee's high child care costs for the child (and the child is under 12 years).

Legislative References

Sections 5, 8, 98C, 98S, 117(2)(b)(i)(C), 117(3), 117(3B) and 117(4) to 117(9) *Child Support (Assessment) Act 1989*

Explanation

An assessment can be changed if in the special circumstances of the case, the costs of maintaining the child are significantly affected because of high child care costs in relation to the child (section 117(2)(b)(i)(C)).

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

This reason applies to child support assessments from 1 July 1999. At that time other amendments to the Assessment Act reduced the payee's 'disregarded income amount' by removing the automatic inclusion of a child care component in the formula assessment. Prior to the amendments a payee's disregarded income amount included provision for child care costs regardless of whether they were incurred or not.

A payee can make an application to change their child support assessment if they consider that the costs of caring for the child are significantly affected by the high costs of child care.

Before an assessment can be changed CSA must be satisfied that all of the following elements exist:

- the child care costs are only high if they total more than 5% of the payee's child support income amount for the child support period;
- the capacity to maintain the child is significantly affected because of high child care costs;
- the costs must be incurred by a payee (section 117(3A)(a));
- the child must be younger than 12 years of age at the start of the child support period;
- the payer must not be entitled to child support for a child of the same relationship (whether as substantial or major contact, shared or divided care)

If all of these elements are not satisfied there are no special circumstances or reason for a change to the assessment.

Are the child care costs high?

Have the costs been incurred?

Are the costs reasonable and necessary?

Do the costs significantly affect the payee's ability to maintain the child?

The kinds of decisions that reflect high costs of child care

Are the child care costs high?

Child care costs are not high unless they are more than 5% of the payee's child support income for the child support period (section 117(3B)).

CSA will use the parent's child support income amount for the child support period in which the child care costs are, or will be incurred. This will be the income for the last financial year that ended before the start of the child support period, unless:

- the payee has elected to have his or her child support based on an estimate of his or her current income (in which case, CSA will calculate the threshold using the payee's estimated income); or
- the payee';s child support income amount has been varied by
  - a child support agreement;
  - a court order; or
  - a prior change of assessment decision

(in which case CSA will calculate the threshold using the payee's child support income as amended by that agreement, court order or prior change of assessment decision).

This income amount is divided by 365 and then multiplied by the number of days in the period to give a child support income amount for the period.

Example

A payee, M, has child care costs of $3,000 over a 15 month child support period (457 days).

M's child support income amount for the child support period is $40,000.

($40,000 ÷ 365 days) × 457 days = $50,082 carer's notional child support income.

5% x $50,082 = $2,504

As $3,000 is more than $2,504 payee's child care costs are high.

CSA will use the following method to calculate whether the payee's child care costs are high in a case where the payee's child support income amount changes within the child support period (for example, because the payee lodged an estimate of his or her income within the child support period):

1. Work out the payee's child care costs for the whole child support period.
2. Divide the child support period up into separate 'sub-periods' according the dates to which the different child support income amounts (CSIAs) apply.
3. Calculate the number of days in each 'sub-period'.
4. For each 'sub-period', divide the CSIA by 365 then multiply the result by the number of days in the 'sub-period' to calculate the 'sub-period CSIA figure'.
5. Work out the sum of all the sub-period CSIA figures.
6. Are the child care costs at step 1 more than 5% of the total amount at step 5?
7. If yes, the payee's child care costs are high.

Only 'net' child care expenses are taken into account (i.e. less any child care benefit that is deducted by the child care centre from the fees, or refundable to the payee by the Family Assistance Office). CSA will not take into account the possibility that the payee or his or her partner may receive a child care rebate in the future when working out the payee's net child care costs. The possibility of a rebate will, however, be considered when deciding whether a change to the assessment is 'just and equitable'.

Have the costs been incurred?

A payee should substantiate the costs incurred when making their application for a change to their assessment. Evidence can include enrolment forms for child care, holding fees and similar documentation. Costs are 'incurred' if there is a definite commitment to the expenditure even if an actual payment has not been made. But there must be a reasonable expectation that the cost will be incurred.

Are the costs reasonable and necessary?

There should be an element of necessity in incurring the child care costs, e.g. work-related purposes. This extends to parents attempting to join the workforce, including those who are undertaking study, training or education.

CSA has to determine the reasonableness of the costs claimed. Examples of reasonable child care costs include:

- day care centre costs, and
- before and after school care costs.

Do the costs significantly affect the payee's ability to maintain the child?

A payee must be able to show that the total costs of maintaining the child are high because the cost of child care for that child is high. If the cost of child care is high but the total cost of maintaining the child is no greater than usual there may not be a reason to change the assessment. The costs of maintaining the child are considered in the context of the financial circumstances of the payee.

The kinds of decisions that reflect high costs of child care

If CSA decides that the child support assessment should be changed because of high costs of child care, it may increase the payee's disregarded income amount by the total net child care costs. Adjusting this component of the formula assessment allows the parents to use other administrative processes such as estimates, if necessary.

Example

The payee, F, works full time and has sole care of 3 children, aged 2, 4 and 10. F pays $6,000 in child care costs for the 15 month child support period. F receives $2,500 in Child Care Benefit for that period. F's net child care costs for the child support period are $3,500. F's child support income amount for the period is $50,082. 5% of $50,082 = $2,504

F's total net child care cost exceeds 5% of F's child support income amount by $996.

To add F's net child care costs to the disregarded income amount:

Disregarded income amount = $39,312

Total net child care costs = $3,500 (for 457 days)

Annualised net child care costs = $3,500 ÷ 457 x 365

Total = $2,795

The disregarded income could be increased by $2,795 to $42,107

Where an application for a change to the assessment includes more than one reason CSA will consider the impact that increasing the disregarded income amount will have on the overall change to the assessment. The decision made will depend on the individual facts of the case.

If the payee's income is less than the disregarded amount, CSA will consider other methods of changing the assessment, such as varying the annual rate of child support.

If a reason to change the assessment is established CSA is required to consider whether it would be just and equitable, or fair, and otherwise proper to make a particular decision.

In deciding whether a change would be 'just and equitable', CSA will take into account that a 30% child care rebate is available to assist Australian parents with their child care costs from 1 July 2004. The maximum rebate per child is currently $4,000 and this can only be used to offset tax otherwise payable by that parent (or his or her partner). However, the rebate can only be claimed in the succeeding financial year (for example, the rebate for child care costs in 2004/5 can be claimed in the parent's tax return for 2005/6).

CSA will take into account the circumstances of the individual case in deciding whether to factor in the future possible effect of the child care rebate into any change to the assessment. This will be included in the written reasons for the decision.

Version 1.5

Issued 28 July 2006

< Previous Next >

2.6.13: Reason 7

Context

A payer or payee can apply for a change of assessment in special circumstances if a parent's necessary expenses significantly affect their capacity to support the child.

Legislative References

Sections 4(2)(a) and 117(2)(a)(iii)(A) *Child Support (Assessment) Act 1989*

Explanation

There can be a reason to change an assessment if there are special circumstances because the capacity of either parent to provide financial support for their child is significantly reduced because of their commitments which are necessary to enable them to support themselves (section 117(2)(a)(iii)(A)).

Parents can make an application to change the child support assessment if they can show that their capacity to provide child support is significantly affected by the cost of supporting themselves.

There are 3 criteria that must be established before CSA can be satisfied that an assessment should be changed for this reason:

- Are there special circumstances of the case?
- Are the commitments necessary and reasonable to enable the parent to support themselves?
- Do the commitments significantly affect the parent's ability to meet the assessment?

What are 'special circumstances' under this reason?

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

The Assessment Act is based on the assumption that parents on similar incomes can pay the same amount of child support for the same number of children (section 4(2)(a)).

A parent must show that there is something special or unusual about their case. The mere fact that a payee's or a payer's expenses exceed their income is unlikely to amount to a special circumstance.

The desire for expenditure on hobbies, entertainment, and holidays do not amount to a special circumstance.

The effect of a property settlement or agreement

An order or agreement relating to a property settlement which requires one parent to assume liability for a debt is unlikely to amount to a special circumstance. However, the responsibility of one parent for debts pending property settlement may amount to a special circumstance.

Where property settlement has not been made, CSA will consider:

- who exercises control of the relevant assets, e.g. it is less likely to be fair to change the assessment where the parent retains control of the asset.
- Whether a property settlement is likely to occur within a short period. If so, it may be appropriate to change the rate for a short time pending property settlement and/or disposal of the asset.

What are necessary commitments for self-support?

A parent must have necessary commitments or expenses for self-support for the reason to be established. CSA must:

- examine the nature of the expenditure to decide whether it is a 'necessary commitment' by looking at the kind of expenditure and the reasons for the expenditure, and
- decide if the amount of the expenditure is 'necessary'.

The word 'necessary' is not intended to produce an unrealistically low standard of living for parents (*Gyselman and Gyselman (1992) FLC 92-279*).

When families separate, it is likely that there will be insufficient income to support two households at the same standard or even at a reasonable standard of living. CSA must balance competing values, the obligation of the absent parent to continue to support their child against the need for that parent to maintain themselves at a reasonable level. The court has held that the objects of the Assessment Act were intended to reverse what was seen to be the undesirable lack of emphasis upon a parent's commitments. However, on the other hand, it is not intended to completely reverse the situation. It is a question of balance in each case.

Expenditure which may be considered necessary includes:

- reasonable costs of food,
- reasonable costs of accommodation,
- household essentials,
- clothing, and
- necessary transport.

It should be noted that expenses incurred during contact with the children are not included under this reason. Where those costs are necessary to enable contact with the children, they can form the basis of an application under reason 1.

All expenses should be substantiated with appropriate documentary evidence. In some cases the necessity of the cost will depend on the facts of the case, e.g. a person can provide evidence from their treating doctor to show that certain expenses are necessary because they suffer from a medical condition.

The costs of setting up a household or servicing a debt immediately after separation may also be a necessary commitment. A parent leaving a former marital home will often incur costs in establishing a new residence or obtaining new accommodation. There may also be a variety of debts and obligations incurred during the former relationship which must be paid in spite of separation, and which continue to be paid by a parent.

These costs are considered necessary subject to:

- proof of the expense and that it is being paid;
- the necessity of the expense;
- the expense being reasonable (i.e. no more than the minimum payment required if a periodic payment);
- the possibility of rearranging the commitment by refinancing, reducing payment, sale of the asset etc.;
- the period over which the expense will be incurred.

Payments such as contributions to compulsory superannuation or trade unions will generally be accepted as necessary. Voluntary contributions to superannuation may not be necessary unless the applicant can establish that they are in an occupation where retirement takes place comparatively early and where compulsory contributions would be insufficient to provide a reasonable retirement income. Where the applicant is self employed and not entitled to employer contributions under the superannuation levy it may be appropriate to allow superannuation payments at the rate of the levy applicable to the income.

Private health insurance contributions will not generally be considered necessary. However, the expense may be taken into account where the parent would have to pay a higher Medicare levy if they did not have private health insurance. Private health insurance may also be necessary if a parent has a medical condition.

Not every kind of compulsory contractual obligation will be 'necessary'. The onus is on a parent to rearrange their affairs to financially support their child.

The Family Court has held that the proper approach is to take into account unavoidable or compulsory

expenses (such as taxation, Medicare levy and compulsory superannuation) together with necessary living expenses (*Mee and Ferguson (1986) FLC 91-716*).

In all cases the test is:

- is the expense necessary for a reasonable standard of living, and
- is the expense unavoidable or compulsory.

'Reasonable' costs and expenses

There are no definitive rules to help decide if expenses are reasonable. Each case must be considered on its individual circumstances. What is reasonable in one case may be an excessive expenditure in other circumstances. However, a parent will need to show that:

- reasonable measures have been taken to reduce expenditure;
- items related to setting up a new household relate to basic furniture and whitegoods rather than to optional items such as a television, video or CD player;
- the cost of the necessary item, such as a motor vehicle or accommodation, is what is required to meet the need rather than extravagant or luxurious expenditure; and
- where the cost of the expenditure is tax deductible, this has been taken into account.

Compulsory commitments may not be necessary

A commitment that must be paid such as a mortgage, credit card repayment or personal loan will not automatically be considered to be necessary.

Examples

> Where a parent, knowing of their child support obligation, enters into a finance arrangement for cable television or a mobile telephone it would not be considered to be either necessary or a special circumstance.
>
> A parent's commitment to a mortgage to buy a house is not necessary if it affected their ability to meet a previously attainable child support obligation.

A commitment related to acquiring an asset or a financial resource (e.g. real property, shares or an insurance policy) for the future will not be 'necessary' (*Dwyer and McGuire (1993) FLC 92-420, Bassingthwaite and Leane (1993) FLC 92-410*). Child support is intended to assist a payee to meet the recurring, day-to-day and often pressing, expenses of maintaining a child. A child is not required to live in penury now in the hope of a future expectation.

Are the costs of self-support significant?

Once a parent has established that there are special circumstances and that the expenses are reasonable and necessary, the third element is to consider if they significantly reduce the parent's ability to provide financial support.

CSA will compare the expenses with the available income (and any other benefits or relevant financial resources). Where a parent's necessary living expenses significantly exceed the funds available to them their capacity to provide financial support is likely to be significantly affected, and the reason will be established.

What period should a decision to change an assessment cover?

In most cases, short-term adjustments to the annual rate of child support will be appropriate to enable a parent to refinance debts, reorganise their financial affairs, or dispose of assets.

Examples

> A parent who has a complex salary package involving fringe benefits prior to separation may require time to reorganise their affairs following separation.
>
> The costs necessarily incurred by a recently separated parent in establishing a new home are unlikely to be a long term consideration.

Version 1.2

Issued 30 August 2004

< Previous Next >

2.6.15: Reason 9

Context

A payer or payee can apply for a change of assessment in special circumstances if the parent's capacity to support the child is significantly affected by their legal duty to maintain any other child or another person.

Legislative References

Section 5, 98C , 98E, 117 and 151B *Child Support (Assessment) Act 1989*

Sections 60D, 66L, 67B, 67C, 72 and 75 *Family Law Act 1975*

Sections 134, 135 and 136 *Family Court Act 1997 (WA)*

Explanation

There can be a reason for changing an assessment if, in the special circumstances of the case, the capacity of either parent to provide financial support for the child is significantly reduced because of:

- the duty of the parent to maintain any other child or another person; or
- the special needs of any other child or another person that the parent has a duty to maintain; or
- the commitments of the parent necessary to enable the parent to support any other child or another person that the parent has a duty to maintain; or
- the high costs involved in enabling a parent to have contact with any other child or another person that the parent has a duty to maintain (section 117(2)(a)).

The three threshold requirements are:

1. there are 'special circumstances'
2. the applicant has a duty to maintain another child or another person; and
3. that duty significantly affects the applicant's ability to provide financial support for the child.

Special circumstances

The phrase 'special circumstances of the case' is not defined in the Assessment Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' (*Gyselman and Gyselman (1992) FLC 92-279*).

Legal duty to maintain

The words 'duty to maintain' are limited to a legal duty and do not include what is only a moral obligation to maintain a person or child (*Vick and Hartcher (1991) FLC 92-262*).

The principles established in Vick and Hartcher were later adopted in *Dwyer v McGuire (1993) FLC 92-420* where it was found that a husband had no legal duty to support his elderly parents and sister.

Examples

A person may have a legal duty to maintain a child or another person if:

- they are supporting their husband or wife (but not a de facto partner) in accordance with section 72 of the Family Law Act;
- the person is male, and supporting the mother of his child (to whom he is not married) for the childbirth maintenance period
- they are supporting a child (including a step-child) who is a relevant dependent child;

- they are supporting an adult child in accordance with section 66L of the Family Law Act;
- they are paying child maintenance for a child (including a step-child) in accordance with a court order made under the Family Law Act, or by a foreign court (i.e. not an administrative assessment of child support)
- they have an obligation to support a child or another person under state legislation (for example an order for child maintenance made under the *Family Law Act 1997 (WA)*);
- the Family Court has made consent orders recognising Kupai Omasker (the Torres Strait Islander traditional practice of adoption).

A person does not have a legal duty to support a person for whom they have provided an 'assurance of support' as a condition of that other person's migration to Australia. An assurance of support is the assuror's undertaking to repay the Commonwealth for certain entitlements that the assuree may claim while in Australia. It does not create a legally enforceable duty for the assuror to support the assuree.

Children of the payer and payee

Reason 9 does not apply in relation to the children for whom child support is payable (i.e., the children for whom the payer must pay child support to the payee). If the children have a special need, reason 2 may be relevant)

Reason 9 may apply if the payer has a duty to maintain a child other than the child for whom he or she is liable to pay child support to the payee.

Payer's relevant dependant children

The administrative child support formula already takes into account the payer's responsibility to support their relevant dependant children (i.e. the payer's children by birth or adoption, or step-child who live in the payer's household) by increasing the payer's exempt income amount. (See chapter 2.4, the basic formula). The payer's duty to maintain a relevant dependant child will not be a special circumstance that would warrant a change to the assessment, unless the child also has a special need.

Children living with the payee (who are not the payer's children)

The additional allowance for a relevant dependant child only applies to a payer. Therefore, Reason 9 may apply if the payee has a duty to maintain a child other than the child for whom the payer is liable to pay child support, (eg, the child of an earlier or subsequent relationship) and there are special circumstances, or if the child has a special need.

Spouse or partner

A person may have a legal duty to maintain a spouse if the spouse is unable to adequately support themselves by reason of:

- having care and control of a child of the marriage who is under 18;
- their age, physical or mental incapacity to obtain employment;
- or any other adequate reason.

The duty is limited to a married spouse and does not include a de facto partner (section 72 Family Law Act). The Family Law Act also provides that a person is liable to support their spouse only to the extent that they are reasonably able to do so, taking into the matters listed in section 75(2) of the Family Law Act.

Example

> Payer F is liable to pay child support to Payee M for their child B. Payer F has remarried. Her husband O is unable to work. There are no children of F and O's marriage. Payer F may have a legal duty to maintain O, depending upon the reasons for O's inability to work.

As noted above, the administrative child support formula already takes into account the payer's responsibility to support their relevant dependant children by increasing the payer's exempt income amount. (See chapter 2.4, the basic formula). There is no specific increase in the payer's exempt income amount where the payer has a dependant spouse. However, the mere fact that a payer's spouse is staying home to care for the children of the marriage does not, of itself, meet the reason 9 test. Nor is it sufficient that the payer's income does not meet the needs of the household, as a result of the spouse's unemployment (or underemployment). The applicant must also be able to show that there are 'special circumstances' in their case.

Examples

Payer M is liable to pay child support to Payee F for their child A. Payer M has remarried. He and his new wife N have a disabled child, C. N is unable to return to the workforce because C's disability prevents C attending school or using childcare. C's disability is a special circumstance and Payer M has a legal duty to maintain N, as well as a legal duty to maintain C. Payer M's legal duty to maintain N and C significantly affects his capacity to provide financial support for A.

Payer F is liable to pay child support to Payee M for their child A. Payer F is married to H who has a child S. S's other parent is deceased. H is not employed and has no personal income. H provides full-time care at home for S, who has special needs. Payer F has no legal duty to maintain S, as S is not F's child. However, F does have a legal duty to maintain H.

Where a person applies under this reason because their spouse or child has a medical condition, or requires medical treatment, CSA will require them to provide appropriate medical evidence of that condition.

Mother of the child/child birth maintenance period (where the parents are not married)

A person does not generally have a duty to support their partner if they are not legally married. However, the father of an unborn child may be liable to pay maintenance to the mother and reasonable medical expenses in relation to the birth, in most cases for a period of 2 months prior to the birth and 3 months after the birth (sections 60D(1) and 67B Family Law Act, or sections 134 and 135 of the Family Court Act 1997 (WA)). Section 67C of the Family Law Act sets out the matters that are to be considered in determining the contributions the father is liable to make (or section 136 of the Family Court Act 1997 (WA)).

Where a person applies under this reason because they have a legal duty to support the mother of their unborn child, CSA will require them to provide appropriate medical evidence of the pregnancy and the expected date of confinement. CSA will also require information about the mother's financial circumstances (see section 67C of the Family Law Act and section 136 of the Family Court Act 1997 (WA)).

Adult children

A child support assessment for a child ends if the child turns 18 years of age unless the payee applies for an extension of child support to the end of that school year when the child is still a full-time secondary student (section 151B). It is not necessary for a payee to apply for a change to their child support assessment.

A parent does not automatically have a legal duty to maintain a child over 18 years of age. A court can make an order for the maintenance of an adult child if it can be established that maintenance is necessary to enable the child to complete their education or because of a mental or physical incapacity (section 66L Family Law Act). A parent must be able to show that they have a legal duty to maintain an adult child before an assessment can be changed. If CSA is satisfied that the child meets the criteria set out in section 66L a reason can be established even if an order has not been made *(Bienke v Bienke-Robson (1997) FLC 92-786*).

CSA may recommend that an application be made to a court having jurisdiction under the Assessment Act (section 98E) in cases where it is too complicated to determine whether the 'adult' child is continuing education or whether they have a mental or physical incapacity. However, in most cases, CSA will be able to make a finding on the basis of evidence supplied by the applicant and respondent.

When deciding if a parent has a legal duty to maintain another child over 18 years who is proposing to undertake tertiary education, CSA may consider (*Cosgrove v Cosgrove (1996) FLC 92-700*):

- whether the child's dependence upon its parents had ceased and the application amounts to a reinstatement of that dependence,
- the period between the initial cessation of dependence (if any) and the application,
- whether the child had completed the course of education intended by the parents to outfit them for employment sufficient to support the child,
- other assistance, benefits or education which the child has received,
- the ability of the child to complete the course in question,
- the likelihood of the child completing the course in question,
- the financial capacity of the child to maintain himself or herself to the completion of the education,
- the financial circumstances of those responsible for the support of the child (generally the parents),

- the filial relationship between the child and the person from whom maintenance is sought.

Kupai Omasker

A legal duty to maintain a child will be established where the Family Court has issued consent orders that recognise Kupai Omasker, the Torres Strait Islander traditional practice of adoption.

Special needs

The term 'special needs' is not defined in the legislation. There must be some evidence that the needs of the child, or the other person relate to a condition or disability that is out of the ordinary. This can be because of a physical, mental or learning disability or because of a special talent or ability (*Lightfoot v Hampson (1996) FLC 92-663*).

Examples

A child's learning disability.

A condition that is distinct from the 'usual' childhood illnesses suffered by a child may be a condition that is 'out of the ordinary'.

A long-term or short-term physical or mental disability.

In some cases, needs which arise from such special talents that are likely to lead to particular success or prominence may be considered 'special needs'. Gifted sports people could be considered to have special needs (*Blamey and Blamey (1995) FLC 92-554*).

The person who seeks to rely on this reason will need to provide documentation, such as medical evidence, to substantiate their claim. Similarly, CSA will require the parent making the application to provide evidence of the net expenditure associated with the special need.

This reason does not apply in relation to the special needs of a child for whom child support is payable (who would be covered by reason 2)

Costs of contact

If a parent has high costs of contact with a child or person they have a legal duty to maintain (other than the child for whom they are liable to pay child support to the payee), this may also be a reason for a change of assessment. The principles that apply to calculating contact costs under reason 9 are the same as those applying to reason 1.

Version 1.5

Issued 24 December 2005

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.6.2: What are the reasons for a change of assessment?

Context

The 10 reasons for a change of assessment application are listed in the Assessment Act.

Legislative References

Sections 98C and 117 *Child Support (Assessment) Act 1989*

Contents

CSA can only change an assessment if one or more of 10 listed reasons is established 'in the special circumstances of the case' (sections 98C and 117(2)).

There are 10 reasons for a change of assessment (section 117(2)).

Reason 1. The costs of maintaining a child are significantly affected by either parent's high costs in enabling them to spend time with, or communicate with the child.

Reason 2. The costs of maintaining a child are significantly affected by high costs associated with the child's special needs.

Reason 3. The costs of maintaining a child are significantly affected by high costs of caring for, educating or training the child in the way both parents intended.

Reason 4. The child support assessment is unfair because of the child's income, earning capacity, property or financial resources.

Reason 5. The child support assessment is unfair because the payer has paid or transferred money, goods or property to the child, the payee, or a third party for the benefit of the child.

Reason 6. The costs of maintaining a child are significantly affected by the payee's high child care costs for the child (and the child is under 12 years).

Reason 7. The parent's necessary expenses significantly affect their capacity to support the child.

Reason 8. The child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents.

Reason 9. The parent's capacity to support the child is significantly affected by:

- their legal duty to maintain another child or person,
- their necessary expenses in supporting another child or person they have a legal duty to maintain
- their high costs of enabling them to spend time with, or communicate with, another child or person they have a legal duty to maintain.

Reason 10. The child support assessment is unfair because:

- the payer earns additional income for the benefit of their resident child (who is not the payee's child), or
- the payee earns additional income for the benefit of their resident child (who is not the payer's child).

If one of the 10 reasons for a change of assessment exist, CSA must also consider whether changing the assessment would be 'just and equitable' and 'otherwise proper' (section 98C(1)).

Version 1.3

Issued 3 August 2007

< Previous Next >

2.6.3: A decision to refuse to change an assessment

Context

CSA can decide that an assessment should not be changed.

Legislative References

Sections 98A, 98E, 98F, 98J, 98JA, 98L, 98R, 98RA, 98S, 98SA and 112 *Child Support (Assessment) Act 1989*

Explanation

No power to make a change of assessment decision

Power to refuse to change an assessment

CSA must give written notice of the decision

In some circumstances, CSA has no power to make a change or has a discretion to refuse to change an assessment.

No power to make a change of assessment decision

CSA cannot make a decision varying an assessment:

- for any day that is more than eighteen months before the day upon which a person lodged his or her application for a change of assessment (section 98S(3B)(a)) unless a court has granted leave under section 112 to make a change for an earlier period; or
- for any day that is more than eighteen months before the day upon which CSA notified the payer and payee of its proposal to change the assessment in a CSA-initiated change of assessment (section 98S(3B)(b)) unless a court has granted leave to make a change for an earlier period under section 112; or
- for any day outside the period for which a court has granted leave for CSA to make a determination (and which is more than eighteen months before the date upon which the application for change of assessment was lodged, or the CSA notified the payer and payee of its proposal to change the assessment in a CSA-initiated change of assessment) (section 98S(3C)); or
- to an amount lower than the minimum annual rate of child support for a particular child support period unless the assessment is based on the modified formula that applies in a case where the care of the child/ren is shared or divided between the parents (section 98SA).

Power to refuse to change an assessment

CSA can refuse to change an assessment in the following situations.

- A parent's financial circumstances, or the issues associated with the case, are too complex to be decided by CSA (section 98E). CSA will recommend that the parent make an application to a court for a change of assessment.
- The application does not disclose any of the 10 change of assessment reasons (section 98F(a)).
- A change of assessment reason exists, but it would not be just and equitable or otherwise proper to make a decision to change the assessment (section 98F(b)).
- A person makes a new change of assessment application after CSA has refused a prior change of assessment application lodged by that person and CSA is satisfied that the later application doesn't include any new issues (section 98J(2)).

The issues involved in a CSA initiated change of assessment are too complex to be decided by CSA (section 98R). In these cases, CSA will recommend that either parent make an application to a court for a change of assessment.

- Where the requirements to change an assessment in a CSA-initiated change of assessment are not satisfied (section 98L(1)).

CSA must give written notice of the decision

CSA must notify both the payer and payee when it refuses an application to change the assessment (section 98JA(1)), or if it decides not to proceed to make a change in a CSA-initiated change of assessment (section 98RA(1)).

CSA's notice must include information about the parent's right to object to CSA's decision. If CSA has refused to change the assessment because the issues are too complex to be decided by CSA, the notice must advise the parents that they can apply to a court for a change of assessment if they are aggrieved by CSA's decision on the objection. If CSA has refused to change the assessment for any other reason, the notice must advise the parents that they can apply to the Social Security Appeals Tribunal if they are aggrieved by CSA's decision on the objection. (See sections 98JA and 98RA.) .

Version 1.4

< Previous Next >

3.1.1: Child maintenance orders

Context

The Family Law Act provides for a court to make a child maintenance order. These orders can be made by consent of the parties or by a judgement of the court. The court can also register agreements about child maintenance.

Legislative reference

Section 152 *Child Support (Assessment) Act 1989*

Part VII of the *Family Law Act 1975*

Family Court Act 1997 (WA)

Explanation

The Family Law Act (FLA) does not allow a court to make a child maintenance order if CSA could make a child support assessment for the child (section 66E FLA). This means that most of the child maintenance orders that CSA receives are variations to previously made orders. The court is also able to deal with applications for maintenance for children and from parents/carers who are not eligible for a child support assessment.

Who can apply to a court for a child maintenance order? (section 66F FLA)

- A parent of the child (including an adoptive parent).
- The child in their own right.
- A grandparent of the child.
- Any other person concerned with the care, welfare or development of the child.

The following people can apply for a child maintenance order for a child who is in the care or guardianship of a person under a child welfare law.

- The child in their own right.
- A parent who has daily care of the child (including an adoptive parent).
- A relative who has daily care of the child.
- A child welfare officer of a State or Territory.

Who can a court order to pay child maintenance?

- Either or both of the child's parents (section 66C FLA).
- The child's step-parent (for more information see Orders for step-parents to pay maintenance).

Can a court make an order for a child over 18 years? (Section 66L FLA)

A court can make a child maintenance order for a child over 18 years, or extend an order past a child's 18th birthday, if satisfied that it is necessary:

- to enable the child to complete their education; or
- because the child has a physical or mental disability.

What if a court makes a child maintenance order if CSA could make a child support assessment for the child?

See Effect of a court order for maintenance of an eligible child where there is no assessment in chapter 4.3

How can an order be changed?

Any person entitled to apply to a court for a child maintenance order can apply to the court for a variation to an existing order (section 66S FLA).

When does an order end?

A child maintenance order may contain a provision that says it will end at a specified time, or when a particular event occurs. If so, the order ends at the specified time, or when the event occurs.

A child maintenance order ceases to be in force if CSA makes an administrative assessment of child support for the payer, payee and child concerned (section 152 Assessment Act).

Under the Family Law Act, a child maintenance order will end:

- If the child dies (section 66U).
- If the payer dies, unless the order expressly provides for it to continue after the death of the payer (section 66U).
- If the payee dies, unless the order expressly provides for it to continue after the death of the payee and nominates a person to whom those payments are to be made (section 66U).
- If the child is adopted, marries or starts a defacto relationship (section 66V).
- A child maintenance order for a child under 18 ends when the child turns 18 unless the order says that it will continue after that (sections 66L and 66T).
- A child maintenance order for a child aged over 18 that was made to enable the child to complete his or her education ends when the child ceases education (section 66VA).
- A child maintenance order for a child aged over 18 that was made because the child has a physical or mental disability ends if the child ceases to have the disability (section 66VA).

How can I recognise a child maintenance order?

A child maintenance order typically has a clause which states:

> 'The father is to pay the mother for the maintenance of each of the 3 children of the marriage the sum of $45 per week being a total of $135 per week.'

Version 1.0

Issued 1 October 2002

< Previous Next >

3.1.4: Court-registered agreements, financial agreements and parenting plans

Context

The Family Law Act provides for a court to register agreements for spousal or child maintenance.

Legislative reference

Part VII, Division 4 (Parenting Plans), *Family Law Act 1975*

Sections 63A to 63H, 66S, 86, and 87 *Family Law Act 1975*.

Part VIIIA *Family Law Act 1975*.

Explanation

Child maintenance agreements

Before 27 December 2000, parents who were not eligible for an assessment of child support could make an agreement for child maintenance and register this in a court. Court-registered maintenance agreements have effect as if they were court orders made by consent (sections 86 and 87 FLA).

Parenting plans

Parenting plans were introduced on 27 December 2000. A parenting plan is a written agreement between a child's parents about any aspect of their parental responsibilities. A parenting plan can contain provisions about child maintenance (section 63C), and can be registered by a court (section 63E FLA).

Child maintenance provisions in a court-registered parenting plan have no effect if CSA could make a child support assessment for the payer, payee and child involved. However, the parents can apply to CSA for acceptance of the written agreement as a child support agreement (section 63CAA of the FLA). (See chapter 2.5 Agreements).

If CSA cannot make a child support assessment for a case, the child maintenance provisions in a court-registered parenting plan have effect as if they were a child maintenance order made by the court (section 63G FLA).

Spousal maintenance

Before 27 December 2000, parties to a marriage could make an agreement for spousal maintenance and register this in a court. Court-registered maintenance agreements have effect as if they were court orders made by consent (sections 86 and 87 FLA).

From 27 December 2000, a spousal maintenance agreement must also comply with the requirements of a Financial Agreement (Part VIIIA FLA). A court must approve the provisions of the agreement before registering it.

How can an agreement be changed?

A child maintenance agreement can be varied by:

- the parents making a parenting plan that includes child maintenance provisions, and applying to the Family Court for it to be registered.
- one of the parents applying to the court for a variation (section 66S).

A parenting plan may be changed by:

- revoking the existing parenting plan and by making a further agreement which comes into effect when it is registered as a parenting plan (section 63D FLA).
- the child maintenance provisions in a parenting plan can be varied on application to the Family Court by one of the parents as if it were a child maintenance order (section 63H and 66S FLA).

A spousal maintenance agreement may be changed by:

- making a new agreement which must be approved by the court.
- one of the parties to the agreement applying to the court under section 83 of the Family Law Act.

When does a court-registered agreement end?

A spousal maintenance agreement ends at the same time as a spousal maintenance order.

A child maintenance agreement ends at the same time as a child maintenance order.

The child maintenance provisions in parenting plan will end at the same time as a child maintenance order.

Version 1.0

Issued 1 October 2002

< Previous Next >

2.8.4: Amending and ending assessments

Context

CSA can amend an assessment to take into account changed circumstances.

Legislative References

Sections 39, 74, 74A and 75 *Child Support (Assessment) Act 1989*

Explanation

CSA can amend an assessment at any time to give effect to the provisions of the Act (section 75). An assessment can be amended despite the fact that:

- the child support has been paid,
- the child support period has ended,
- there are court proceedings pending in relation to the assessment.

The reasons why an assessment may be amended include (but are not limited to):

- correcting any error or mistake (whether or not made by CSA),
- correcting the effect of any false or misleading statement made to CSA,
- giving effect to a terminating event,
- giving effect to an event or change of circumstances that affects the annual rate of child support,
- giving effect to CSA's acceptance of a child support agreement,
- giving effect to a decision or order of a court which has jurisdiction under the Act.

CSA will amend an assessment under section 75 where the amendment is necessary to give effect to a provision of the Act, either expressly or impliedly.

Example

An amendment to give effect to a decision to allow an objection.

CSA cannot amend an assessment where there is no express or implied requirement to amend an assessment. It cannot amend an assessment to give effect to a change in circumstances if it does not affect the annual rate of child support payable.

Example

A parent's level of care has increased but does not amount to substantial contact under the Act.

CSA cannot make an amendment that contravenes a specific provision of the Act.

Example

CSA cannot amend an assessment to give effect to an estimate of income that was made after the estimate period as section 60 requires that an estimate be made before or during the estimate period.

Date of effect of change in care

If CSA amends an assessment to take into account a change in the level of care a payee provides for a child the amendment takes effect from the day CSA was notified, or becomes aware, of the change (section 74A).

However, if the change means that the person is no longer an eligible carer, a terminating event has happened (see below) and the assessment should be amended from the date of that event (section 74).

Adding a relevant dependent child

If a parent advises CSA of arelevant dependent child that is not taken into account in their child support assessment, CSA can amend the assessment to increase the parent's exempt income. The date of the amendment will depend upon the date CSA became aware of the relevant dependent child (section 39(3)).

If CSA becomes aware of the child within 28 days of that child becoming a relevant dependent child (eg the date the child was born, or came to live with the payer), CSA can amend the assessment from the date the child became a relevant dependent child.

If a payer notifies CSA of a relevant dependant child within 28 days of CSA sending the payer a notice of assessment under section 34, then CSA can amend that assessment from the date the application was made (section 39(3)(d)) provided that notice was sent not more than 28 days prior to 1/1/2008 (i.e., 4 December 2007) or on or after 1 January 2008. Otherwise, CSA will amend the assessment from the date it became aware of the relevant dependent child.

Example

> An application for administrative assessment is made by F on 20 November 2007. The application is for M to pay child support for F and M's children A and B. A section 34 notice advising that the application has been accepted is sent to M on 4 December 2007. M rings CSA on 24 December 2007 to advise that M and Z have a four year old child, Y. The assessment is amended to show that M has a relevant dependant child from 20 November 2007.

CSA must amend an assessment from the date a child ceases to be a relevant dependent child, no matter when CSA became aware of that fact (section 39(4)).

Giving effect to terminating events or changes in circumstances

If CSA is notified, or becomes aware of:

- a terminating event (section 12), or
- an event which affects the annual rate of child support payable,

it will immediately take into account a terminating event or change of circumstances that affects the rate of child support payable (section 74).

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.8.3: Assessment notices

Context

When CSA makes an assessment it must immediately give notice in writing to each parent.

Legislative References

Section 69 and 76 *Child Support (Assessment) Act 1989*

Regulation 8 *Child Support (Assessment) Regulations 1989*

Explanation

The following information must be included in the notice of assessment (section 76):

- the annual and daily rates of child support payable.
- the child support percentage applied (See chapter 2.4),
- the names and dates of birth of the children in the care of the carer entitled to child support who are taken into account to establish the child support percentage and, if any of the children are shared care children, the names of those children;
- the liable parent's child support income amount (See chapter 2.4),
- the number of relevant dependent children (See chapter 2.4) of the liable parent in each of the following age groups:
    - younger than 13;
    - 13 or older, but younger than 16;
    - 16 or older, but younger than 18.
- the child support income amount of the carer entitled to child support if the carer is a parent (See chapter 2.4),
- if a child is in the shared care of both parents and only one of the parents is a liable parent of the child, the child support income amount of the parent who is not a liable parent of the child and the number of relevant dependent children of that parent in each of the following age groups:
    - younger than 13;
    - 13 or older, but younger than 16;
    - 16 or older, but younger than 18.
- if both parents of a child are liable parents:
    - the annual rate of child support that would be payable by the other liable parent concerned if section 52 (the cap on the combined liabilities of 2 liable parents (See chapter 2.4) did not apply, and
    - the other liable parent's child support income amount; and
    - the number of relevant dependent children of the other liable parent in each of the age groups specified in subsection 2A;
- if 2 or more carers are entitled to child support from a liable parent, the number of children for whom that parent is liable,
- whether the carer entitled to child support was in receipt of an income tested pension, allowance or benefit when the assessment was made,
- any other matters that are prescribed by regulation. (No other matters have been prescribed.)

However, if the assessment is altered by a court order or child support agreement, CSA is not required to provide this information in the assessment notice.

The notice must also include information about the parents' rights to (section 76(3)):

- object to the particulars of the assessment,
- appeal against the assessment if dissatisfied with the objection decision,
- apply for a change of assessment,
- apply to a court for a departure order (subject to section 115),
- apply to a court for non-periodic child maintenance (e.g. a lump sum order), and
- apply to have the child support assessed not reduced by more than 25% under section 128. (See chapter 4.3)

Annual and daily rates

When CSA assesses the annual rate of child support payable by a liable parent, the assessment notice must state the liability as both an annual rate and a daily rate (section 69).

CSA converts the annual rate of child support to a daily rate by dividing the annual rate by 365.25 (regulation 8). The calculation is rounded to 5 decimal places.

Example

> The annual rate is $2652. $2652 divided by 365.25 is 7.260780. As the 6th decimal digit (in this case 0) is less than 5, this is rounded *down* to 7.26078.
>
> If the annual rate were $2653, dividing that by 365.25 would give 7.263518. As the 6th decimal (8) is 5 or more the result would have been rounded *up* to 7.26352.

Version 1.3

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.4.2: Basic values used in a child support assessment

Child support period starting in:	**2004**	**2005**	**2006**	**2007**	**2008**
Exempt income amount -					
no relevant dependant child	$12,950	$13,462	$13,983	$14,646	$15,378
with relevant dependant child	$21,622	$22,480	$23, 349	$24,464	$25,689
Additional exempt income amount for relevant dependant child, or child in shared care of payer and payee:					
Child under 13 years*	$2,307	$2,362	$2,424	$2,489	$2,570
Between 13 and 15 years*	$3,219	$3,296	$3,380	$3,504	$3,705
16 years and over*	$4,914	$5,109	$5,307	$5,560	$5,838
* *child's age 12 months after the start of the child support period*.					
Disregarded income amount	$38,168	$39,312	$41,881	$43,654	$45,505
Inflation factor	4.00	4.00	6.20	2.70	5.00
2.5 x average weekly earnings (Payer's income cap prior to 1 July 2006)	$126,659	$130,767	$139,347	(No longer applicable, refer to following row)	(No longer applicable, refer to following row)
2.5 x all employees average weekly total earnings (Payer's income cap from 1 July 2006)		$98,280	$104,702	$109,135	$113,763
Minimum annual rate of child support	$260	$260 ($320 for any part of child support period after 1 July 2006)	$260 ($320 for any part of child support period after 1 July 2006)	$333	$339
Median income	$23,059	$23,981	$25,468	$26,156	$27,464

Note: Before the end of each calendar year CSA must publish the following amounts in the Australian Government Gazette for all child support periods starting in the following calendar year (section 155 of the Assessment Act):

- the yearly equivalent of the EAWE amount
- the relevant partnered rate of Social Security pension
- the relevant unpartnered rate of Social Security pension
- the amounts used to calculate exempt income in section 39(2)(b), and
- the minimum annual rate of child support.

Version 1.9

Issued 1 January 2008

< Previous Next >

2.4.9: The payer or payee has contravened a court order for residence or contact for the child

Context

Where either parent's level of care is affected by the contravention of a court order or registered parenting plan the basic formula is modified. The formulas for shared, substantial or major care are applied but each parent is taken to have the lesser of the actual care or care under the order or parenting plan.

Legislative References

Subdivision H of Division 2 of Part 5, sections 54A and 54B *Child Support (Assessment) Act 1989*

Explanation

The level of care of a child that a parent has is modified if there has been a breach of a parenting plan or court order without a reasonable excuse. (See chapter 2.2 topic levels of care) (section 8A). In these cases:

- The income cap for high-income payers operates if applicable (section 54B(1)(a)).
- The disregarded amount does not apply to the payee (section 54B(1)(b)).
- To work out each parent's exempted income amount allowance is made for shared children, but not for children with whom the parent has only substantial care (section 54B(1)(d) and (e)).
- To work out the child support percentage in each assessment:
  - a child in substantial care counts as 0.35 of a child,
  - a child in shared care counts as 0.50 of a child, and
  - a child in major care counts as 0.65 of a child.

Example

M and F have one child under 10, A. A lives with M. A court order provides that M is to have major care of A and F is to have substantial care of A. However M has breached the order and A has no contact with F. M is taken to have major contact and F is taken to not be an eligible carer. M has a child support income of $40,000. F has a child support income of $30,000. The annual rate of child support (for a child support period commencing 1 January 2003) is calculated:

M is not a liable parent. As a liable parent, F has no relevant dependants.
F is liable to pay child support for 0.65 children. F's child support percentage is 14%.

F is liable to pay M an annual rate of child support calculated as:	= ($30,000 - $12,315) ´ 14% = $2,476

Version 1.4

Issued 23 December 2003

< Previous Next >

2.8.2: How an assessment is made

Context

This topic explains the rules CSA must follow when making a child support assessment.

Legislative References

Sections 31, 34A, 65, 67, 68, 70, 72 and 73 *Child Support (Assessment) Act 1989*

Regulation 12 *Child Support (Assessment) Regulations 1989*

Explanation

CSA has to make a child support assessment when it accepts an application for administrative assessment. The child support period starts on the day the application was made to CSA, Centrelink or the ATO (section 31(2) and regulation 12). CSA makes a new assessment of child support whenever a new child support period starts. (See chapter 2.3 Child support periods)

CSA can act on the basis of documents and information in its possession. It is not required to conduct any inquiries or investigations when making an assessment (section 65).

Assumptions as to future events

When making an assessment CSA can assume that known facts will be unchanged. (section 73). This allows CSA to assume certain facts (e.g. the care arrangements for the child/ren) will apply in the future.

Assessment to relate to all children for whom child support is payable

Where a payer is assessed to pay child support to a payee for more than one child, CSA will make one assessment including all the children. This does not apply when child support is payable to more than one payee (section 67).

Assessment to relate to whole or part of a single child support period

A child support assessment relates to all, or some of the days, of a single child support period. In other words, an assessment cannot cover more than one child support period (section 68). This does not prevent a single notice of assessment from dealing with more than one assessment.

Assessments for part periods

CSA can make an assessment that is less than a full child support period (a part period) (section 71). This allows assessments to be made where circumstances result in a child support period of less than 15 months.

Validity of assessments

An assessment is still valid, even if CSA fails to comply with any of the provisions of the Assessment Act (section 72).

Example

> CSA fails to advise a parent that they have been assessed to pay child support. The assessment is still valid. It can only be challenged using the provisions set out in the Act.

Section 72 does not apply when a parent applies to the SSAT for a review or makes an appeal to a court about the assessment (Part VIIA or Subdivision 3 of Part VIII of the Registration and Collection Act). (See Chapter 4.3).

Evidence

CSA's assessment notice is treated as conclusive evidence in legal proceedings that the assessment has been properly made and that the particulars of the assessment are correct (section 70). A document signed by the Registrar which appears to be a copy of an assessment notice is also treated as conclusive evidence, as though it was an original.

Version 1.3

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.8.1: The minimum rate of child support

Context

Where the child support formula produces an annual rate below the relevant minimum annual rate, a minimum assessment will generally be payable.

Legislative References

Sections 5, 66, 66A, 66B, 66C and 155 *Child Support (Assessment) Act 1989*

Regulations 7C and 7CA *Child Support (Assessment) Regulations 1989*

Explanation

What is the minimum annual rate of child support?

From 1 July 1999 the minimum annual rate of child support is worked out using the following formula (section 66(4)):

$$\$320 \times \frac{\text{Highest index number for the September quarter of 2005 or for the September quarter of a later year that ends before the child support period commences}}{\text{Index number of the September quarter of 2005}}$$

The minimum annual rate changes each calendar year with adjustments to the Consumer Price Index. It applies to child support periods starting within that calendar year. As at 1 January 2007 the minimum annual rate of child support is $333 per annum.

CSA is required to publish the minimum annual rate of child support in the Australian Government Gazette before the end of each calendar year.

When does the minimum annual rate apply?

In most cases a payer is liable to pay at least a minimum annual rate of child support (section 66).

The minimum annual rate does not apply where (section 66B):

- the care of the child/ren is shared between parents,
- the care of the child/ren is divided between parents,
- either parent has substantial contact with the child/ren,
- the assessment is modified by a court order under Division 4 of Part 7 (a departure order), or
- the assessment is modified by a child support agreement.

How is the annual rate calculated where a payer is liable in more than one case?

Where a payer is paying child support to more than one payee any assessments excluded by section 66B (above) are not counted in working out whether the payer has a liability less than the minimum annual rate of

child support. Where a payer has a liability to more than one payee the minimum liability is apportioned between the payees according to how many children each has in their care.

Example

As at 1 July 2006, F has been assessed to pay child support to 4 carers for a total of 5.5 children.

Assessment 1 F is assessed to pay child support to A for one child. The assessment is varied by a court order which has an annual rate of $200.

Assessment 2 F is assessed to pay child support to B of $81 a year. F and B share care of one child and have sole care of one child each. The $90 F is assessed to pay B is offset by the $9 B is assessed to pay F.

Assessment 3 F is assessed to pay C child support for one child. The annual rate using the child support formula is $60.

Assessment 4 F is assessed to pay D child support for two children. The annual rate using the child support formula is $120.

In working out whether the combined annual rate of child support for F is less than the minimum annual rate:

- The court-varied assessment is excluded. The liability to A of $200 remains in place.
- The divided and shared care case is excluded. The liability to B of $81 remains in place.
- The total combined annual rate (for the liabilities to C and D) is $180.

As this is less than the minimum annual rate for 2006 of $320, the annual rate for these assessments is $320. The $320 is apportioned between the payees according to how many children each has in their case.

Assessment 3 1/5.5 x $320 = $58.18 rounded to $58

Assessment 4 2/5.5 x $320 = $116.36 rounded to $116

F's total annual liability for all 4 cases is $455.

When can a minimum assessment be reduced to nil?

A payer can apply directly to a court for a departure order (Division 4 of Part 7) or can apply to CSA to have the minimum annual rate reduced to nil for a particular child support period (section 66A). An application to CSA must be made during that child support period.

CSA will grant a payer's application if it is satisfied that the payer's income for the first 12 months of that child support period will be less than the minimum annual rate of child support for that period. If a reduction is granted it will apply to the days in the child support period that are subject to a minimum assessment. If the minimum assessment applies only to part of the child support period (e.g., where the payer lodged an estimate of income after the beginning of the child support period) the reduction to nil will not apply to the earlier part of the child support period. The reduction cannot continue after a child support period ends (section 66A(3)). A payer can reapply in a later child support period.

'Income' is not restricted to taxable income. For the purposes of working out whether a person has an income of less than the minimum annual rate of child support for that period it is defined as (section 66A(4)):

- any money received, earned or derived for personal use or benefit, or
- any periodic payment by way of gift or allowance.

The only exclusions to this definition are prescribed in the regulations (regulation 7CA). They are:

- amenity allowances or gratuities (incidental payments for personal items or other minor expenses, but not payments for work or study) paid to prisoners, and
- disability support pensions or TPI pensions where the amount of the payment is 'substantially' used for self support. The term 'substantially' is not defined in the regulation. However, CSA uses 85% as a general guide.

'Money':

- includes coins and bank notes, cheques and deposits into bank accounts (but not goods, services, or some other benefit, even if the payment is capable of being valued in money terms).
- is 'earned' when it is received in return for labour or service, in compensation or as profit.
- is taken to be 'derived' in accordance with ordinary business and commercial principles. It includes capital payments, trust distributions and royalties.
- is taken to be 'received' when it comes into a person's possession. This covers most money which comes into a person's hands including capital payments, e.g. a tax refund, Lotto wins, lump sum compensation, profit from the sale of an asset, deposits into a joint bank account.
- must be received for the person's own use or benefit. Income received by a person in another capacity isn't included.

Examples

A trustee does not receive trust funds for their own use or benefit.

A person receiving Family Tax Benefit or child support is receiving that money for the children concerned and not for their own use or benefit.

A partner only receives money for their own use or benefit when the person receives their individual share of the partnership profit.

Only net income is considered. CSA will deduct the person's expenses that directly relate to them earning the particular type of income from their gross income. However 'paper expenses' (such as depreciation of property or assets or carried forward losses) should not be deducted, as they are not considered to relate directly to earning the income and do not reduce cash flow.

If expenses claimed are discretionary (e.g. repairs to a rental property) CSA must be satisfied that they were necessary before they will be deducted from income.

Example

The landlord of a rental property should be able to show that the property would not have been let if the repairs claimed were not carried out.

Although taxable income is calculated by taking the total amount of deductions away from the total amount of assessable income CSA will consider each individual source to determine if the amounts in total are equal to or more than the minimum annual rate of child support for that period. Losses from one source will not be deducted from income from another source.

Example

A liable parent has applied for a minimum assessment to be reduced to nil for a child support period starting 1 August 2006. The liable parent has the following income:

Net dividends $200

Net interest $50

Net distribution from family trust $100

Loss from rental property $500

The loss from the rental property is not taken into account in calculating the liable parent's income. Only net income from each source is considered and losses are not offset against other income. The liable parent's income is $350 ($200 + $50 + $100). The liable parent's application for a reduction will not be accepted as the minimum annual rate of child support for that period is $320.

CSA must notify an unsuccessful applicant in writing (section 66C). That person can object to the particulars of the assessment.

If neither parent objects to a decision to reduce an assessment to nil, the assessment will remain in place until the end of the child support period. If either parent believes that the assessment does not reflect the liable parent's actual income they can apply for a change of assessment.

If the minimum assessment was based on an estimate of income supplied by the payer CSA is able to amend or reconcile the income used or a payer can make a new election.

Version 1.4

Issued 22 March 2007

< Previous Next >

2.4.3: When a modified formula should be used

Context

CSA must use a modified formula to make a child support assessment in certain circumstances.

Legislative References

Division 2 of Part 5 *Child Support (Assessment) Act 1989*

Explanation

The formula CSA uses to calculate child support payable is modified if:

- the payer has a high income,
- the payee is a parent of the child and the payee's income is higher than the disregarded amount,
- care is shared or divided between parents,
- the payee is not the child's parent and they have claimed child support from both the child's parents,
- the payer is liable to pay 2 or more payees,
- the payer or payee has contravened a court order for residence or contact for the child.

Version 1.4

Issued 23 December 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.4.8: Payer liable to pay 2 or more payees

Context

The amount of child support payable is modified if a payer is assessed to pay child support to 2 or more payees (section 53).

Legislative References

Subdivision G of Division 2 of Part 5, sections 53 and 54 *Child Support (Assessment) Act 1989*

Explanation

If a payer is liable to pay child support to 2 or more payees the liability to each is calculated according to the basic formula and any modifications that are applicable.

The child support percentage is modified by multiplying the percentage that would otherwise apply by the number of relevant children in that carer's care and then dividing that product by the total number of children for whom the parent is liable to pay child support (section 54).

Example

M and F1 have 2 children, A and B. Both children live with F1. M and F2 have one child C, who lives with F2. M has a child support income of $40,000. F1 and F2 have incomes below the disregarded amount. The child support periods for both cases start on 1 February 2003. M is a liable parent for a total of 3 children. The child support percentage for 3 children is 32%. The calculations are:

Child support percentage for F1	= 32% ´ 2/3 = 21.35%
Child support percentage for F2	= 32% ´ 1/3 = 10.65%

Those percentages are applied to the assessment formula. The child support percentage is rounded to 2 decimal places, to the nearest 0.05% (section 54(2)).

Child support payable to F1	= ($40,000 - $12,315) ´ 21.35% = $5,911
Child support payable to F2	= ($40,000 - $12,315) ´ 10.65% = $2,948

Version 1.4

< Previous Next >

2.4.6: Care shared or divided between parents

Context

If care of a child is shared or divided between parents, each parent is an eligible carer in relation to the other. CSA calculates and offsets each parent's liability to pay child support to the other. This can occur where a child resides with both parents or where each parent has a child living with them.

Legislative References

Subdivision E of Part 5, sections 47, 48 and 49 *Child Support (Assessment) Act 1989*

Explanation

The following modifications to the basic formula apply in shared care (including substantial and major contact) or divided care cases:

- The income cap for high-income payers operates if applicable (section 48(1)(a)).
- As each parent is an eligible carer the disregarded amount does not apply (section 48(1)(b)).
- To work out each parent's exempt income amount, allowance is made for a child in shared care, but not for a child with whom the parent has only substantial contact (section 48(1)(d) and (da).
- To work out the child support percentage in each assessment:
  - a child in substantial care counts as 0.35 of a child,
  - a child in shared care counts as 0.50 of a child, and
  - a child in major care counts as 0.65 of a child.

Total number of children a payer is liable to pay child support for	Modified child support percentage
Less than 0.35	Not applicable
0.35	8
0.50	12
0.65-0.70	14
0.85	16
1.00	18
1.05	19
1.15-1.20	20
1.25-1.35	22
1.40-1.45	23
1.50-1.55	24
1.60-1.70	25
1.75-1.90	26
1.95-2.05	27
2.10-2.20	28
2.25-2.40	29
2.45-2.60	30

2.65-2.85	31
2.90-3.20	32
3.25-3.70	33
3.75-4.20	34
4.25-4.70	35
4.75-5.0 or more	36

Example

M and F have 2 children under 10, A and B. A lives with M. M has major care of B. F has substantial care of B. M has a child support income of $40,000. F has a child support income of $30,000. The annual rate of child support (for a child support period commencing 1 January 2003) is calculated:

As a liable parent, M, has 2 relevant dependants and is liable to pay child support for 0.35 children. The child support percentage is 8%. The amount of child support payable is:

Rate of child support	= ($40,000 - $25,027) x 8% = $1,198

As a liable parent, F has no relevant dependants and is liable to pay child support for 1.65 children. The child support percentage is 25%. The amount of child support payable is:

Rate of child support	= ($30,000 - $12,315) x 25% = $4,421
F has to pay M	$4,421 - $1,198 = $3,223

Example

M and F have 2 children under 10, A and B. A lives with M. B lives with F. M has a child support income of $40,000. F has a child support income of $30,000. The calculations are:

As a liable parent, M has one relevant dependant and is liable to pay child support for one child. The child support percentage is 18%. The annual rate of child support (for a child support period commencing 1 January 2003) is calculated:

Rate of child support	= ($40,000 - $22,792) x 18% = $3,097

As a liable parent, F has one relevant dependant and is liable to pay child support for one child. The child support percentage is 18%. The amount of child support payable is:

Rate of child support	= ($30,000 - $22,792) x 18% = $1,297
M has to pay F:	$3,097 - $1,297 = $1,800

Version 1.4

Issued 23 December 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.2.6: Tax refund intercepts

Context

The majority of child support payers are also Australian taxpayers. Where tax has been overpaid, the Australian Taxation Office (ATO) is obliged to refund the excess to the taxpayer (section 8AAZLF of the Taxation Administration Act). The ATO will advise CSA when a refund is available and about to be repaid to a taxpayer who is also a child support payer. CSA may take the refund and apply it in satisfaction of that person's debt (section 72).

Legislative References

Section 72 *Child Support (Registration and Collection) Act 1988*

Section 8AAZLF *Taxation Administration Act 1953*

Explanation

Section 72 of the Registration and Collection Act applies where:

- the Commissioner of Taxation would otherwise be required to refund an amount to a person under section 8AAZLF of the *Taxation Administration Act 1953*; and
- the person owes a debt to the Commonwealth.

Where section 72 applies, CSA can require the Commissioner to pay an amount of the refund or the amount owing as a debt (whichever is the lesser) to CSA. CSA applies this amount to the person's debt.

What are debts?

Which amounts can be applied to debts?

Which debts will the amounts be applied to?

When will CSA take a tax refund?

What are debts?

Tax refunds can only be applied against debts to the Commonwealth.

A debt to the Commonwealth is a debt arising from a child support assessment, court order, court registered maintenance agreement, payee's child support overpayments (including an amount registered for collection by CSA as a parentage overpayment order), late payment penalties or an overseas maintenance liability that is registered for collection by CSA. It does not include amounts for estimate penalties or costs.

Which amounts can be applied to debts?

Amounts that the Commissioner of Taxation would otherwise refund to a taxpayer under section 8AAZLF of the *Taxation Administration Act 1953* can be applied to that person's debt. The Commissioner will notify CSA that the amounts are available.

Not all amounts that are paid by the Commissioner are refunded under section 8AAZLF.

A refund under section 8AAZLF includes a tax refund that arose from the application of the Child Care Tax Rebate. Where a paying customer is entitled to a Child Care Tax Rebate, the rebate is applied as a tax offset to that person's tax liability.

Note: a person's tax liability is the tax payable by that person based upon his or her taxable income.

If that person's tax liability is less than their rebate entitlement, the rebate will only apply to the extent of their tax liability. In the 2005/06 tax year, eligible taxpayer's can apply for the Child Care Tax Rebate in relation to child care costs incurred in the 2004/05 year. The maximum rebate for the 04/05 year is $4000.

Example

> A taxpayer who is also a child support payer has a taxable income of $50,000. The ATO assesses that person's tax liability to be $11,000. The person is a salary & wage earner who has had tax deducted and remitted to the ATO every payday and this amount totals $11,000. The person is entitled to a Child Care Tax Rebate of $3000 which represents 30% of out of pocket child care expenses after the child care benefit is deducted. The rebate acts as a tax offset and will result in a $3,000 refund of the person's tax instalment deductions. As this refund is made under section 8AAZLF, CSA can use s72 to intercept it to apply to the person's child support debt of $4,200. Note - overpaid tax is being refunded, not the rebate.

Note - other tax rebates that act as tax offsets operate in this manner also.

Example

> Family Tax Benefit (FTB) claimed through the tax system is not paid out under section 8AAZLF. This means that the FTB component of a tax refund cheque is not available to be applied against a debt. The Commissioner will exclude FTB amounts when notifying CSA of an amount available for refund.

A potential refund to a company associated with a person who owes a debt is not subject to section 72 and will not be reported to CSA.

Which debts will the amounts be applied to?

CSA cannot obtain and hold a refund amount in order to apply it to a debt that has not yet accrued and which is not yet owed. However, section 72 does apply to debts that are due but not yet payable.

If the person's debt equals or exceeds the amount of the tax refund owing to the person, CSA can apply the full amount to the debt. Where the debt is less than the amount owing CSA can apply an amount equal to the amount of the debt. The Commissioner will refund the balance to the client.

When will CSA take a tax refund?

Generally, CSA will automatically obtain and apply a refund amount if there is a debt that is due and payable CSA will apply the amount unless there are reasons not to do so.

CSA may decide not to apply the amount, or part of the amount, where the payer would suffer serious hardship if CSA were to apply the refund. A child support payer who is suffering serious hardship and expecting a tax refund should contact CSA to discuss their circumstances and to make a payment arrangement before they lodge their tax return.

Serious hardship

If the payer has made, or will enter into, a satisfactory payment arrangement for his or her debt, CSA will not apply his or her tax refund to the debt if doing so would deprive that person of the means of providing for basic needs as they arise from day-to-day.

Basic needs include:

- food,
- clothing,
- medicine,
- accommodation,
- education for children, or
- other basic requirements

for the payer and for family members dependent on him or her.

A person will not suffer serious hardship if applying an amount owing merely limits social activities or entertainment, or limits access to goods or services of a better nature or standard.

In deciding whether serious hardship exists CSA will take into account any tax refund components that are not subject to section 72.

CSA will also consider:

- the extent to which the person knowingly contributed to the circumstance, and
- the number of times the person has previously claimed serious hardship.

Example

A payer, M, has consistently failed to comply with child support obligations in a Stage 1 case. M has lodged a tax return and is expecting a tax refund of $300. M's current child support liability is suspended (due to a low-income non-enforcement period). CSA is collecting the minimum prescribed amount from M's social security benefit in satisfaction of his arrears of child support .

M claims to have no job, money or assets and is about to be evicted unless he pays rent of $250 within the next 2 weeks. M also has an overdue electricity account. M's next social security payment is not due for 2 weeks.

M agrees to pay $10 per week by direct payments to CSA, in addition to the prescribed amount deducted from his benefit. M will make the first payment in 2 weeks time. It will take M 3 years to repay his arrears at this agreed rate. CSA decides to release M's refund on the basis that M is suffering serious hardship, and that his present circumstances do not allow him to repay the debt more quickly. M undertakes to contact CSA when his prospects improve to make a new arrangement.

Version 1.4

Issued 1 January 2008

< Previous Next >

5.5.1: Child Support Reserve

Context

The Child Support Reserve is established under the Registration and Collection Act, to enable CSA to transfer to payees the child support payments that it receives from payers.

Legislative References

Sections 73, 74 and 75 *Child Support (Registration and Collection) Act 1988*

Explanation

The Registration and Collection Act sets up a Child Support Reserve (the Reserve) (section 73).

When CSA receives any payments for any purpose, they are credited to the Consolidated Revenue Fund (consolidated revenue). CSA must transfer the following amounts from consolidated revenue into the Reserve (section 74(1)):

- amounts for payment of child support debts, including remittances from employers
- amounts from payers of enforceable maintenance liabilities intended for voluntary payment to payees, and
- amounts repaid to the Registrar that persons were not entitled to have been paid out of the Reserve, (repayments of child support overpayments).

Money in the Reserve can be applied to the following payments (section 75):

- payments under section 76(1) to payees of registered maintenance liabilities
- payments to the payees of enforceable maintenance liabilities where the payer has made a voluntary payment
- to repay amounts paid into the Reserve that the Child Support Registrar was not entitled to have received under the Act
- to repay consolidated revenue when amounts have been transferred from consolidated revenue to top up payments to payees under sections 77 and 78.

Version 1.1

Issued 1 September 2004

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.1.1: The child support scheme

The Child Support Agency (CSA) was formed to assist separated parents to take responsibility for the financial support of their children. CSA administers the child support scheme which was introduced by government in 1988.

The scheme involves the assessment of child support in accordance with a formula as well as the collection and enforcement of court orders, maintenance agreements and child support assessments.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.1.3: Two systems for child support

The proposed child support reforms were implemented in 2 stages by 2 separate Acts.

The first Act is now known as the Child Support Registration and Collection Act (it was formerly the Child Support Act 1988). This Act:

- established the Child Support Agency
- saw the registration, collection and enforcement of court orders and court-registered agreements for child support and spousal maintenance
- took effect from 1 June 1988.

The second Act is known as the *Child Support (Assessment) Act 1989* [the Assessment Act]. This Act:

- implemented an administrative assessment of child support in accordance with a formula
- took effect from 1 October 1989.

Version 1.1

Issued 23 January 2008

< Previous Next >

2.3.4: Child Support Years

Context

Child support periods were introduced from 1 July 1999. Before then, CSA made assessments that applied to child support years.

Legislative References

Section 5 *Child Support (Assessment) Act 1989*

Schedule 16 *Child Support legislation Amendment Act 1998*

Child Support (Adoption of Laws) Amendment Act 2000 (WA)

Child Support legislation (Transitional Western Australia) Regulations 2000 (WA)

Explanation

Before 1 July 1999 CSA made administrative assessments of the rate of child support for a period called a child support year. Child support years aligned with the financial year and ran from 1 July to 30 June. The last child support year ran from 1 July 1998 to 30 June 1999 (the 98-99 child support year).

The 'last relevant year of income' for a child support year is the financial year 2 years before the child support year. In most cases, this was the most recent tax assessment available when CSA made a new assessment. The last relevant year of income for the 98-99 child support year is the 96-97 financial year.

Each CSA assessment applied to a separate child support year. This did not mean that the rate of child support stayed the same for the whole child support year. The assessment could be amended to replace default incomes or to take account of various changes such as relevant dependants, changes in levels of care, estimates, etc. Some amendments applied retrospectively to the whole of the child support year (for example, changes to the parent's child support income arising from estimates or default income). Other amendments applied from the date of the change in circumstances, no matter when the parents advised CSA of that change (for example, new relevant dependants and changes in levels of care).

Transitional Arrangements for cases with liabilities that commenced on or before 1 July 1999

Transitional arrangements applied to child support cases with liabilities that started on or before 1 July 1999. For these cases the last assessment under the old 'child support year' arrangements ended on 30 June 1999. CSA made a new assessment under the 'child support period' arrangements to apply to a child support period starting 1 July 1999 and ending 30 September 2000.

The transitional provisions contained a special definition of the 'last relevant year of income'. Assessments for the child support period commencing 1 July 1999 are based upon parents' income for the financial year 1 July 1997 to 30 June 1998 (1997-1998) increased by an inflation factor.

The transitional provisions also required CSA to make a new assessment for these cases when either parent's 1998-1999 tax assessments issued. Up to and including 31 May 2000, CSA made a new assessment if:

- the payer's 1998-1999 tax assessment issued and CSA had not made a new assessment because the payee's tax assessment has previously issued; or
- the payee's 1998-1999 tax assessment issued; the payee's income could affect the rate of child support payable and CSA had not already made an assessment based on the payer's 1998-1999 income.

Western Australian ex-nuptial children cases

The pre-July 1999 rules continued to apply up to and including 31 December 2000 to cases where the payee and child reside in Western Australia and the payer and payee have never married each other (WA ex-nuptial cases). Special transitional arrangements applied to those cases.

CSA made new assessments of child support for WA ex-nuptial cases to apply to a 15-month child support period commencing on 1 January 2001. The last relevant year of income for these assessments was 1999-2000.

Special arrangements apply to WA ex-nuptial cases where the ATO had assessed neither parent's 1999-2000 taxable income before 16 December 2000. For those cases, the assessment for the child support period that started on 1 January 2001 was based upon the parents' 1998-99 taxable income. CSA made a new administrative assessment if the ATO issued the payer's tax assessment for the 1999-2000 year before 15 June 2001. If the ATO issued the payee's tax assessment for the 1999-2000 year before 15 June 2001, and before the payer's tax assessment, CSA made a new administrative assessment as long as the payee's income would affect the rate of child support. These assessments applied to a new child support period commencing on the first day of the month following CSA's assessment.

From 1 November 2007 the Assessment Act applies to all WA ex-nuptial children the same as it does to all other cases.

Version 1.1

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.3.6: Customer's authorised representatives

Context

Customer may specifically authorise a third person to make enquiries on their behalf.

Legislative References

Section 150 *Child Support (Assessment) Act 1989*

Section 16 *Child Support (Registration and Collection) Act 1988*

Privacy Act 1988

Explanation

CSA can communicate with a person that a customer has authorised to act on their behalf. When CSA is talking to a customer's representative it may disclose protected information about that customer which is necessary for that particular enquiry. This is permitted under the secrecy provisions because the disclosure is for the purposes of the Child Support legislation (section 16(2A) Registration and Collection Act and section 150(2A) Assessment Act). However, CSA will not disclose to a parent's authorised representative any personal information about the other parent in the child support case.

CSA will talk to a customer's representative if it is satisfied:

- the person has the customer's authority to talk to CSA about their child support case, or is legally entitled to act on behalf of the customer; and
- the representative has provided sufficient information to identify themselves to CSA.

Types of customer representatives

Authorisation

Extent of a person's authority to act for a customer

Interpreters and telephone assistance services

Types of customer representatives

CSA can deal with 3 types of customer representatives:

- Solicitors
- Authorised agents with power of attorney, or other legal authority to act on the customer's behalf
- Representatives with ordinary authority.

A solicitor or authorised agent can represent a CSA customer in all child support matters, except for a change of assessment conference. A representative with ordinary authority can only represent a CSA customer in simple child support matters.

Solicitors

Solicitors are professionally entitled to act on behalf of their customers who may also be CSA customers. If a CSA customer instructs their solicitor to act (i.e. deal with CSA) on their behalf in child support matters, CSA will accept such representation and deal with the solicitor. Solicitors should be able to include an authorisation with written requests, or to send a facsimile of it for telephone communications. Solicitors can also have implied authorisation by lodging a form (such as an application for a child support assessment)

signed by the customer, or by producing a CSA letter sent to the customer.

Authorised agents with power of attorney, or other legal authority to act on the customer's behalf

Possession of a power of attorney is sufficient authorisation if it confers on the recipient authority to do anything that he or she can lawfully do on behalf of the customer as an attorney. The representative must be able to provide a written document conferring a general power of attorney. Alternatively, the power of attorney may have been conferred for child support purposes only. If a person has been given a power of attorney to act on someone's behalf for purposes including child support purposes, CSA will accept such representation.

The Public Trustee's Office and the Office of the Protective Commissioner are both legally authorised to act on behalf of a person.

Representatives with ordinary authority

Representatives with ordinary authority have been authorised by a CSA customer to act on their behalf. They are not a CSA customer's solicitor and do not have a power of attorney. In most cases, they are a CSA customer's partner calling CSA seeking or giving information on behalf of the customer. However, they could be customer's friends, or any third party authorised by a CSA customer to act on their behalf, including Members of Parliament and their electorate staff making representations on behalf of their constituent. It should be noted that the Commonwealth Ombudsman does not act as a customer's representative. The Ombudsman is authorised by legislation to investigate the administrative actions of Commonwealth agencies including CSA.

Authorisation

CSA must be satisfied that a customer has authorised a person to represent them in child support matters. For example, tax agents can act on behalf of a customer in relation to their taxation affairs, but would not generally represent their customers in child support matters.

A customer can authorise CSA to talk to their representative on a single occasion by handing over the telephone, or give that authorisation to CSA in person. CSA will require written authorisation from the customer if the arrangement is to continue. CSA may also collect identity information for the representative, and assign an identification number, to verify the representative's identity.

The best proof that a representative has a customer's authority is for the representative to produce a letter of authorisation. A letter of authorisation would preferably:

- identify the customer and the representative;
- be signed and dated by the customer and the representative;
- specify the extent to which the representative represents the customer;
- specify the period it is valid; and
- contain sufficient information to identify the representative (over the telephone or in person).

The authorisation must be current. If no period is specified, CSA will decide whether it is current based on its wording and the circumstances, such as the nature of the relationship between the representative and the customer. In so doing, CSA will consider whether the customer might reasonably expect CSA to give the representative particular information, depending on the nature of the enquiry and the nature of their relationship. For example, the name of the customer's employer or the customer's address would be particularly sensitive and irrelevant to satisfying any inquiry.

In some circumstances the customer may not be able to sign an authority (e.g. if the customer has a physical or mental incapacity that means they are unable to deal with their own affairs) but the representative must still be able to satisfy CSA that they are responsible for the customer's affairs. A medical certificate or a statutory declaration signed by the representative may be appropriate.

CSA will accept that a Member of Parliament (or a member of their electorate staff) is authorised by a customer to act on their behalf if they can produce written authorisation. If they have no written authorisation, CSA will assume an authorisation exists if they can:

- satisfactorily prove their identity and position,
- identify the constituent who has made the complaint, and
- quote information that could only have come from the customer.

CSA:

- will not accept a representatives authority where the representative is a child under 18 years.
- will strongly advise against a customer having either a child over the age of 18 years or the other parent in their case as a representative. However, if they insist CSA will not refuse to treat the person as a representative.

Extent of a person's authority to act for a customer

CSA will accept that a representative with ordinary authority can act for a customer in matters that do not involve negotiations, and matters limited to simple enquiries and actions. A representative with ordinary authority can:

- provide or seek information regarding change in level of care (but not apply for child support for a child on the payer's behalf following a change in care);
- lodge forms signed by customer;
- lodge an application for a child support assessment on behalf of a parent (only if they are also a joint carer of the child);
- make enquiries regarding pending or missed payments;
- make enquiries regarding penalties/debt/recovery action;
- provide information concerning relevant dependant children;
- request statements of account/ certificate debt/notices of assessment;
- provide address information.

CSA will accept that the customer's solicitor or a person with the power of attorney or other legal authority can act for a customer in more complex matters. These are matters that potentially require negotiations; processes which may alter child support liability and obligations; or matters where a representative could make a decision on behalf of the customer. They include, but are not limited to:

- tax refund intercepts
- non-agency payments
- objections
- elections to end or resume CSA collection
- an application for a child support assessments (101s)
- agreements
- debt negotiations
- estimate elections.

Interpreters and telephone assistance services

CSA uses interpreters and telephone assistance services to help communicate with customers where appropriate. Such services are not representing the customer, but enabling CSA and the customer to communicate better. CSA must be satisfied that any interpreter or translator is only relaying the conversation between CSA and the customer, not interposing their own views or altering the information.

External Telephone Assistance Services

Where the National Relay Service or Telephone Interpreter Service is used, translation only will occur. Where a customer wants a relative or friend to act as their translator, and it is clear that more than mere translation is occurring, CSA will treat that person as a customer representative, and require specific authorisation from the customer.

National Relay Service

The National Relay Service (NRS), operated by Australian Communication Exchange Ltd, is a service that allows people who are deaf, or have a speech, hearing or other communication impairment, to communicate with other people over the telephone. They can do this by typing a message on a keyboard of a telephone typewriter (TTY). The message is sent to a TTY at the NRS. A NRS Operator will relay the conversation between the TTY user and the voice telephone user.

The NRS is bound by confidentiality and privacy principles. The NRS is contacted by the customer on their general number 133677. The NRS operator will then dial CSA, and introduce themselves. Thereafter, the operator speaks only the words of the TTY customer. Similarly, if CSA wishes to contact a customer using the

NRS, CSA will call the same general number, and ask for the call to be placed to the customer.

A CSA case officer contacted by a customer using the NRS should initially note the name of the NRS operator and time of the call. The officer should then proceed to establish proof of identity of the customer caller in the usual manner. Similarly, where a CSA case officer needs to contact a customer who uses NRS, CSA will call the NRS, and ask for the call to be relayed to the customer. Proof of identity procedures should then be followed once the customer has accepted the communication mode.

Telephone Interpreter Service

The Telephone Interpreter Service (TIS) is another service that CSA and customers use to help communicate. Providing the customer has given CSA officer consent to use the TIS to communicate and can satisfy the proof of identity requirements, CSA will deal with the customer through the TIS as it would with the customer directly.

Version 1.3

Issued 27 June 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.3.4: Collection and use of third party information

Context

Child support obligations primarily relate to the parents and carers of the children. Generally, CSA does not need to collect and use information in relation to third parties such as a parent's new partner. However, there are some situations where CSA may collect and use third party information.

Legislative References

Child Support (Registration and Collection) Act 1988

Child Support (Assessment) Act 1989

Privacy Act 1988

Explanation

Other children taken into account in the child support assessment

A parent may have other dependent children in their care. This information is relevant to a child support assessment and can affect the amount of child support payable.

Financial relationships with other people

Sometimes a parent's financial affairs may be closely related to, or 'intertwined' with, the financial affairs of other people. A parent may be involved in a formal financial structure such as a business. Parents may also share assets or money with other people, such as a joint bank account, or place their assets or money in the names of other people or entities. This can be relevant when CSA needs to look more closely at a parent's financial affairs.

Change of assessment

If the child support assessment does not accurately reflect a parent's income or capacity to pay child support, a parent can apply for a change of assessment, or CSA can initiate a change of assessment. CSA may then need to look more closely at the parent's financial affairs including financial arrangements involving other people, and decide on the fairest way to treat such arrangements for child support purposes.

A person can apply for a change of assessment if they have a duty to maintain another child or person. The person will need to supply information to verify that such a duty exists and to show how it affects their capacity to pay child support.

Example

> M applies for a change of assessment because of their duty to maintain their disabled spouse, G. CSA may require M to provide medical evidence to verify G cannot support themselves, and details of G's expenses.

A person can apply for a change of assessment if they earn additional income specifically to support children in a new relationship. The person applying for the change of assessment may need to supply financial information about their new partner, to show their partner's capacity to contribute to the support of their children. If the children are from the new partner's previous relationship then it may be necessary to consider what child support the partner receives from the other parent.

In deciding whether to change an assessment, CSA must also consider if any change is fair and equitable and, in doing so, must again look more closely at both parents' financial position. CSA may scrutinise

financial arrangements with other people, especially if a parent shares income, expenditure, debts or assets with another person. This could involve examining household expenses.

Collection and enforcement

If a parent owes child support, and CSA is taking action to enforce payment, CSA may need to make detailed enquiries into the parent's financial affairs. If a parent has financial arrangements involving another person, CSA may need to collect and use information about those arrangements.

Example

> F owes large arrears of child support and CSA is intending to take the matter to court. F advises that they have no assets because their assets are in their new partner's name. CSA may make enquiries about assets in the partner's name and, seeking to have orders made regarding the assets, use that information to ask questions in court.

Statements from third parties

If relevant, CSA will consider statements provided by third parties and may contact a third party to clarify their statement if necessary. CSA will advise the third party and the parent who provided the statement that the other parent will be told the source and given details of the information contained in the statement so that they can comment on the information. If the third party or the parent providing the information do not want the details provided to the other parent, CSA will not consider the statement when making a decision.

Version 1.3

Issued 27 June 2006

< Previous Next >

6.2.3: Information gathering powers under the Assessment Act

Context

CSA has statutory powers to obtain information for the purposes of making and varying child support assessments.

Legislative References

Sections 160 and 161 *Child Support (Assessment) Act 1989*

Regulation 10 *Child Support (Assessment) Regulations 1989*

Explanation

CSA can give a notice to a person requiring them to notify CSA within 14 days and in the manner specified in the notice (section 160), if:

- a specified event or change of circumstances happens; or
- the person becomes aware that a specified event or change of circumstances is likely to happen.

Only events that might affect the payment of child support or the rate at which it is payable can be specified in the notice.

CSA can also require a person to:

- provide information (section 161(1)(a));
- attend and answer questions (section 161(1)(b)); and
- produce documents (section 161(1)(c)).

These powers must be exercised for the purposes of the Assessment Act.

Example

CSA must not use the powers contained in the Assessment Act to obtain information to enforce payment.

A person who is required to attend under section 161(1)(b) (other than a payer, payee, or their representative) is entitled to expenses (section 161(2) and regulation 10).

A notice must give the person a reasonable time to comply. What is a reasonable time will depend on the type and extent of the information sought. CSA will not collect information that is not necessary for its purposes or intrudes unreasonably on a person's privacy (see information about the Privacy Act).

Whilst it can be appropriate to seek information from other departments via informal arrangements, a notice can be issued to another government department. However, there will be instances where the secrecy provisions and/or privacy obligations will prevent other departments from disclosing information in the absence of legal authority to do so.

A notice must also be properly served on the person (see chapter 6.7).

Version 1.4

Issued 3 August 2007

6.2.2: Taking information from children

Context

CSA recognises that taking information from children under 18 can cause distress to the child and the parents. CSA has a general policy of not accepting statements made by a child, either in writing or over the telephone.

Legislative References

Section 16A *Child Support (Registration and Collection) Act 1988*

Section 150A *Child Support (Assessment) Act 1989*

Explanation

CSA will not attempt to obtain information from a child about any of the parents' child support issues. CSA will not discuss with a child any of their parent's child support issues. This policy applies even when a parent is insistent and the child seems willing. It includes face-to-face and telephone contact.

The only exception to this policy is where:

- the child is at least 16 years of age, and
- CSA is required, because of a court order, agreement or change of assessment application, to ascertain whether the child is in full-time employment or to ascertain the level of income received from their employment, and
- there is a dispute about the child's employment status or income level, and
- neither parent can readily obtain evidence to substantiate their claims.

Initially, CSA will request the parent claiming that a change has occurred to provide evidence to support their claim. If the parent supplies no evidence, or if the other parent disagrees with the applicant's claims, CSA may require documentary evidence such as a letter from the child's employer or payslips. Where neither parent supplies information from the employer and there is uncertainty (for example, regarding whether the child is in full-time or part-time employment or the income they receive) CSA will inform the carer parent that it will be writing to the child's employer unless documentary evidence is supplied within a reasonable period. This should reduce the need for CSA to involve a third party in a matter.

In most instances, the carer parent will be able to provides details of the child's employer. CSA will consider contacting the child for this information only where it cannot obtain it by other means. CSA will contact the child by telephone where possible.

Children's evidence

Where either parent presents written evidence from a child to CSA, CSA will disregard it and return it to the parent. CSA will not give any weight to the evidence, even if it is relevant, as it cannot be certain that the child is a credible witness and cannot be satisfied of the circumstances in which the information was obtained.

The only exception to this is in relation to the child's employment as stated above.

Authorising children

CSA will not act on an authority where a parent has authorised a child to receive information on their behalf. Where a parent has language difficulties or a disability that makes communication over the telephone difficult CSA will offer interpreting services, TTY or telephone relay service.

Version 1.2

Issued 27 August 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.2.1: Information need not be in writing

Context

Generally, CSA will accept information in other than written form (i.e. orally) wherever it is practical to do so. Exceptions to this policy occur where:

- there are legal or other requirements that the information be taken in writing,
- there are specific circumstances that suggest information should be taken in writing.

Legislative References

Sections 80, 82 and 86 *Child Support (Registration and Collection) Act 1988*

Section 8 *Electronic Transactions Act 1999*

Schedule 1 *Electronic Transactions Regulations 2000*

Explanation

Legal or other requirements that information be provided in writing

Legislative or other requirements mean that the types of information listed below must be taken in writing.

- *Child support agreements*: Child support agreements must be in writing and be signed by both parties (section 85). A parent's application for acceptance of their child support agreement does not have to be in writing. However, where parents want to extend an agreement to the end of a school year after a child turns 18 both parents must sign the application (section 151B(2) Assessment Act).
- *Application for change of assessment*: An application for a change of assessment must be made in writing (section 98B(1) Assessment Act).
- *Objections and associated notices and applications for extension of time*: An objection, a response by the other parent and an application for an extension of time in which to lodge an objection must be made in writing (sections 80, 82 and 86 Registration and Collection Act).
- *Statutory declarations*: Statutory declarations are required to be made in writing and to be sworn before a witness authorised under the relevant state legislation.

A person can provide information to CSA in writing by sending it to CSA in the mail, sending it by facsimile, or arranging for it to be personally delivered to CSA. A person can also send written information to CSA by email or through CSA's website (section 8 Electronic Transactions Act). The exception is an application for a change of assessment, which must be made by completing a form and mailing or delivering it to CSA (Schedule 1 Electronic Transactions Regulations).

Specific circumstances that suggest information should be provided in writing

Apart from the situations mentioned above, CSA can specify how an application, notice, election or reply must be made (section 150A Assessment Act and section 16A Registration and Collection Act).

CSA will accept information in other than written form (apart from information that must be taken in writing) except where specific circumstances suggest the information should be provided in writing.

Specific factors related to the case or the context in which the information is being provided may mean that information that will generally be accepted in other than written form should be requested in writing. CSA will consider the following:

- *The parties exchanging the information exchange must be comfortable with giving the information in*

other than written form. CSA will not insist that information be provided in other than written form. It is an option for parents. Parents who prefer to provide information in writing are able to. CSA officers may suggest that completing the appropriate form would be a better option in circumstances where there are communication difficulties.

- *The parties exchanging the information must be confident that the information is reliable.* CSA officers will read back to the customer the information they have provided and ask the customer to confirm it. CSA officers will explain the impact of the information being provided by a parent. Where a parent has provided information other than in writing in the past, but has later retracted or amended the information CSA officers may suggest that the information would be better provided in writing unless they have some reason to be satisfied that the information being currently provided is reliable.
- *The parties exchanging the information must be confident that the information is readily capable of being understood.* Complex factual situations may be best dealt with in writing. In many complicated situations, conversation helps to clarify the situation. In other situations, it is better to deal with the issue in writing, perhaps after some discussion. CSA officers will exercise judgement to decide whether the situation is complex and whether it is best dealt with in writing, by discussion, or by a combination of both.
- *The parties exchanging the information should be confident that the information is not being given under duress.* CSA officers will not accept information from a customer where it seems that they have provided the information under duress. The officer receiving the information should be confident that the customer providing the information fully understands the effect that the information will have on their child support obligations or entitlements. Before accepting information CSA officers will explain to the customer how the information will affect their child support obligations or entitlements and the extent and manner of any disclosure to the other parent. CSA will suggest that parents contact Centrelink for advice on how the information provided will affect their benefit entitlements. CSA will suggest that parents seek independent legal advice where appropriate.

CSA officers will use appropriate procedures to check a parent's identity when obtaining information.

Where an application or election can be made other than in written form, the effect of CSA accepting the information orally is the same as the person making a written application or election. The date that all of the relevant information was obtained is the date of lodgement of that application or election.

CSA will arrange to have the appropriate form sent to a parent where it is not practical to take the information over the telephone. Parents can call or visit CSA to seek assistance in completing those forms.

Version 1.3

< Previous Next >

6.2.4: Information gathering powers under the Registration and Collection Act

Context

CSA has statutory powers to obtain information for the purposes of collecting child support. A court can also use these powers to obtain information if a payee is exercising his or her right to enforce a debt via court proceedings (see 5.4.7).

Legislative References

Section 120 *Child Support (Registration and Collection) Act 1988*

Regulation 9 *Child Support (Registration and Collection) Regulations 1988*

Explanation

CSA or a court can require a person to:

- provide information (section 120(1)(a));
- attend and answer questions (section 120(1)(b)); and
- produce documents (section 120(1)(b)).

These powers can only be exercised for the purposes of the Registration and Collection Act.

Example

> CSA must not use the powers contained in the Registration and Collection Act to obtain information to verify an income estimate.

A person who is required to attend under section 120(1)(b) (other than a payer, payee, or their representative) is entitled to expenses (section 120(2) and regulation 9).

A notice must give the person a reasonable time to comply. What is a reasonable time will depend on the type and extent of the information sought.

CSA will not collect information that is not necessary for its purposes or intrudes unreasonably on a person's privacy (see information about the Privacy Act).

Whilst it can be appropriate for CSA to seek information from other departments via informal arrangements, a notice can be issued to another government department. However, there will be instances where the secrecy provisions and/or privacy obligations will prevent other departments from disclosing information in the absence of legal authority to do so.

A notice must also be properly served on the person (see chapter 6.7).

Version 1.4

3.2.2: Collection agency maintenance liabilities

Context

A collection agency maintenance liability can be a registrable maintenance liability.

Legislative References

Sections 17 and 18 *Child Support (Registration and Collection) Act 1988*

Explanation

Before CSA was established, there were different arrangements in each Australian state and territory for collection of maintenance. Where a state or territory collection agency was responsible for collecting a person's liability to pay a periodic amount of maintenance for their step-child, child, spouse or former spouse (but not a de facto spouse) that liability meets the definition of a registrable maintenance liability. A collection agency maintenance liability does not have to arise under a court order.

Version 1.0

Issued 1 October 2002

< Previous Next >

2.2.5: Levels of care

Context

The person's level of care for a child will influence:

- whether a person is an eligible carer entitled to received child support,
- the formula CSA will use to make an administrative assessment,
- the liable parent's exempt income,
- the child support percentage, and therefore
- how much child support a person is entitled to receive, or to pay.

Legislative References

Sections 8, 8A, 12, 74, and 74A *Child Support (Assessment) Act 1989*

Regulation 3A *Child Support (Assessment) Regulations 1989*

Sections 60D, 64B, 70D and 70G *Family Law Act 1975*

Schedule 1A *Family Law Regulations 1984*

Explanation

What is a 'level of care'?

CSA will work out a parent's level of care according to the actual time that the parent is responsible for providing care for the child. This is usually based on the number of nights that the parent has, or will have, the responsibility of caring for the child in the 12 months immediately after the start of a child support period. (See chapter 2.3 Child support periods)

However, care is not restricted to where the child lives or stays overnight. A person can be a principal provider of ongoing daily care for a child who is at boarding school, in hospital or in separate accommodation. A person who simply supervises the child (for example, a baby sitter, a child minder such as a grandparent, a schoolteacher) does not provide ongoing daily care. The issue is who has responsibility for making arrangements for, and decisions about, the child's welfare, not the accommodation arrangements

themselves. A child's income is not a conclusive factor in deciding whether a person provides ongoing daily care for a child.

Determining "ongoing daily care"

There are a number of factors that should be considered in determining whether a person is providing "ongoing daily care". Some of these factors, which are provided for guidance only, are:

- Living arrangements - where is the child residing and who is making decisions about where the child is residing;
- Daily Physical needs - how are the daily needs being met for the child and who is meeting the costs of these needs;
- Social and other activities - who is responsible for making decisions about the child's daily activities and who is meeting the costs of these activities;
- Representations to others - who takes responsibility for liaising with others about a child's daily care and how does this occur.

Shared care

The care of a child is shared when 2 people care for a child substantially equally. This can happen in 2 ways, either:

- one parent is the principal provider of ongoing daily care and the other parent has care for at least 40% (146) of the nights in the first 12 months of a child support period (section 8(1)), or
- the care each parent provides is substantially equal. To decide whether parents care for a child substantially equally CSA will take into account the amount of time during both day and night that each parent cares for the child as well as who is responsible for making arrangements for, and decisions about, the child's welfare. CSA will give weight to statements from both parents that they share care for a child; but CSA will not be satisfied that parents share the care of a child if the amount of time the child spends with each person does not appear to be substantially equal.

Example

A child, A, spends a week with each parent in turn. In the first 12 months of the child support period A spends 182 nights (50%) with M and 185 nights (50%) with F. M and F share care of A substantially equally.

Example

A child, A, stays each weeknight with M. M takes A to F's home at 7am each weekday morning. F provides A with breakfast and takes A to school. F is the emergency contact for the school and carries out parental responsibilities during the day. F collects A from school. M collects A from F's home at 5.30pm, then gives A dinner and supervises homework and bathing.

A also stays with F for 2 nights every second weekend except when M has annual leave when 2 weeks are spent with M and 2 weeks with F.

M and F tell CSA that they believe that they share care of A. CSA is satisfied that M and F care for A substantially equally.

Where parents are separated but are living in the same house CSA will generally accept that the parents share care of their children substantially equally unless either parent is able to show that this is not the case.

Major contact

A parent has major contact with a child when they are the principal provider of ongoing daily care of the child, but another person has substantial contact with the child.

Substantial contact

A parent can have substantial contact with a child in 2 ways, either:

- by caring for a child for at least 30% (110 nights), but less than 40% (146 nights) of the nights in the first 12 months of a child support period (section 8(3)(b)(i)), or
- the principal provider of ongoing daily care and the other person agree that the other person has

substantial contact, even though they provide care for less than 30% of the nights, (section 8(3)(b)(ii)).

Example

A child, A, stays with M for 2 nights every week and for 3 weeks during the school holidays (119 nights or 33% of the nights in the first 12 months of the child support period). A stays with F for the remaining nights (246 or 67% of the nights). M has substantial contact with A and F has major contact.

If the principal provider of ongoing daily care and the other parent agree that the other parent has substantial contact, even though they provide care for less than 30% of the nights, CSA will base its assessment on that level of care until it is aware they no longer agree. This will be the date that either or both parents inform CSA that they no longer agree.

CSA will then decide whether it should amend the assessment for the remaining part of the child support period by looking at the number of nights that each parent actually had care in the first 12 months of that period.

If a parent will not have care for 30% of the nights in the first 12 months of the child support period CSA will decide that they ceased to be an eligible carer from the date CSA was advised that there was no longer an agreement.

Example

M was the sole provider of ongoing daily care for A and B. Care arrangements for A and B change so that they spend 5 nights a fortnight with F. As the care arrangements change in the 8th month of the child support period F will not care for A and B for 30% of the nights in the first 12 months of the child support period. However, the parents M and F, agree that F has substantial contact with A and B. The assessment is calculated on that basis from the date M advised CSA of the agreement.

Four weeks later M advises CSA that although the care arrangements remain the same they no longer agree that F has substantial contact with A and B. CSA must now count the actual number of nights that F will have care of A and B in the first 12 months of the child support period. F has actual care of the children for less than 30% of nights in the first 12 months of the child support period. CSA amends the assessment from the date of M's call. CSA does not vary the assessment for the 4 weeks before M's call because F was an eligible carer until M advised that they no longer agreed F had substantial contact.

If the care of the children remains unchanged CSA will assess F as having substantial contact with A and B from the start of the next child support period.

Sole provider of ongoing daily care

A parent has sole care of a child when they care, or will care, for the child for 70% or more of the nights during the 12 months immediately after the start of the child support period. Care for 256 nights or more during that 12 month period amounts to sole care.

Example

In the first 12 months of the child support period a child, A, lives with M for most of the time but spends one night a week with their parent, F. F also has care of A for 2 weeks during the Christmas school holidays. The total number of nights A will stay with M is 304 nights, or 83% of the nights in the first 12 months of the child support period. M has sole care of A.

Care arrangements covered by a court order or registered parenting plan

If:

- CSA is aware that a court order or registered parenting plan is in force which deals with residency and contact for a child, and
- CSA is notified, or becomes aware, that a person is contravening that order or parenting plan, and
- there is no reasonable excuse for the contravention, and
- as a result, one person has more care of the child and the other person has less care of the child than they are supposed to under the order or parenting plan, then

the person with more care than they are supposed to under the order or parenting plan is taken to have the

level of care set out in the order or parenting plan (i.e. their 'lawful' care), and

the person with less care than they are supposed to under the order or parenting plan will be assessed on the basis of the actual care that they have (i.e. their 'actual' care).

Is a court order or registered parenting plan in force?

A 'registered parenting plan' is a parenting plan registered under section 63E of the Family Law Act. A parenting plan can cover issues such as residence, contact or specific issues relating to a child. Unless a parenting plan is registered it is not 'in force' and has no effect on a child support assessment (section 8A(7)).

A court order includes (section 8A(7)):

- a 'parenting order' as defined by section 64B of the Family Law Act which deals with residence, maintenance, contact or specific issues,
- a 'Family violence order' under section 60D of the Family Law Act. A Family violence order can be an interim order. There may be situations where the parents have both a parenting order and a Family violence order. If a Family violence order is inconsistent with a parenting order, the parenting order prevails and the Family violence order is invalid to the extent of the inconsistency. However, the Family violence order may indicate that the person has a reasonable excuse for contravention of the parenting order.
- an 'overseas child order' is an order under section 70G of the Family Law Act which is an order of a prescribed overseas jurisdiction providing for residence or contact for a child who is under 18. Schedule 1A of the Family Law Regulations 1984 lists the prescribed overseas jurisdictions for section 70G. An interim or exparte order cannot be registered under section 70G.
- a 'State child order' is an order registered under section 70D of the Family Law Act that provides for residence or contact for a child who is under 18. Once registered it has the same effect as an order made by a court under the Family Law Act.

Is a person contravening the court order or registered parenting plan?

Court orders and parenting plans dealing with residency and contact usually include clauses setting out where the child will live and when the child will have contact with the other parent. A parent may be contravening an order or plan if they are not meeting their obligations under that order or plan.

An order or plan specifying contact with a parent obliges the parent with a residence order to enable that contact. If a child refuses to participate in contact, the parent with the care of the child must take reasonable steps to ensure that contact occurs. That parent has an active role and an obligation to positively encourage contact.

However an order or plan does not bind a parent to exercise the contact ordered. If a parent fails to seek or sustain contact they are not contravening the order or plan.

CSA will consider an order or parenting plan to be contravened where a parent:

- intentionally failed to comply with the order or parenting plan, or
- made no reasonable attempt to comply with the order or parenting plan.

Is there a reasonable excuse for the contravention?

A parent who contravenes a court order or parenting plan does not have a reasonable excuse unless (regulation 3A):

- at the time of the contravention, the parent did not understand the obligations imposed by the order or plan on the parent who was bound by it, or
- both parents agreed to the contravention, or
- the contravention happened because the contravening parent believed, on reasonable grounds, that their actions were necessary to protect the health and safety of a person at risk.

Order or plan misunderstood

There can be a reasonable excuse for a contravention if a parent clearly did not understand the terms of the order or plan. CSA will consider:

- whether the order or plan was clear,
- the parent's capacity to understand it,
- whether the parent had legal representation when the order or plan was made, and
- whether the parent attempted to clarify the meaning of the order or plan.

CSA may acknowledge that a misunderstanding of the terms of an order or parenting plan provides a reasonable excuse for contravention in the past. Once any misunderstanding has been cleared up, it will no longer provide a reasonable excuse.

Agreement to contravene

If parents have agreed to the contravention of an order or parenting plan, the contravening parent has a reasonable excuse for the breach. An agreement may be in writing but may also be inferred from the behaviour of the parents over a period of time.

CSA will consider:

- any correspondence between the parents;
- the period of time over which the order or plan has been contravened,
- the age/s of the child/ren and any wishes they have expressed. (However, it is important to note CSA's policy about information from children. See chapter 6.2 Collecting information),
- whether either of the parents has sought to enforce or vary the order or parenting plan.

Belief on reasonable grounds that contravention is necessary to protect the health or safety of a person

A parent can have a reasonable excuse for contravening an order if they believed, on reasonable grounds, that the breach of the order or plan is necessary to protect the health or safety of a person. The child must not be deprived of contact for any longer than is necessary to protect the health and safety of that person.

The person at risk is not necessarily the child or the contravening parent.

To establish a reasonable excuse, the contravening parent must have a 'reasonable' belief'. It is not sufficient that the parent believes that they are acting in the child's best interests or that their belief is sincere. CSA must assess the grounds for the belief objectively to determine whether they are reasonable.

Reasonable grounds for a belief that a parent is acting to protect the health and safety of a person can include the existence of:

- ongoing Family violence,
- ongoing health problems of the child, or another person, which prevent contact, or
- ongoing sexual, emotional or physical abuse.

Example

On 10 September 2004 F applied for child support from M for A and B based on sole care. F's application was accepted and an assessment made.

In October 2004 M contacts CSA and advises that F moved interstate in July 2004 and has denied contact with A and B since that time. M provides a copy of a parenting plan which states that A and B are to spend 4 days a week with F and 3 days a week with M.

F advises that they moved interstate as the situation with M had become intolerable. F alleges that M was stalking F and that F feared for their safety. F provides a copy of a domestic violence order and details of calls to police stations concerning alleged breaches of that order. F also provides the name of the police officer that investigated the matter.

F has established a reasonable excuse for contravening the order. The assessment will continue to be based on F's actual care of A and B (sole care). Both parents are advised of CSA's decision and their objection rights.

Example

F applies for an assessment of child support payable by M based on the sole care of A (age 4). During a pre-registration interview M advises that a residence order provides that A is to reside with M and to have

contact with F for 2 nights each second weekend. M provides a copy of the order and claims F abducted A.

CSA contacts F who acknowledges the order but states that A has said that they want to live with F, rather than M. F does not feel that A should be returned to live with M against their wishes.

CSA decides that the court order is being contravened as F has not taken reasonable steps to ensure compliance with the order. F has no reasonable excuse for the breach.

F actually has sole care of A. But as the court order provides for contact for less than 30% of nights, F is not an eligible carer and is not entitled to an assessment. F's application for an assessment is refused. F is advised of their right to object to CSA's decision to refuse the application.

Example

M applies for a child support assessment from F for their child, A. During a pre-registration interview F complains that M abducted A and should not be able to receive child support. F provides a copy of an order that states that A should reside with F and have contact with M for 2 nights each fortnight.

M advises that F arranged for A to stay with M whilst F was on holiday for a week. During the stay A was unsettled and M took A to a doctor. The doctor considered that A showed signs of sexual abuse and reported those concerns to the child welfare authorities. M provides a letter from the doctor and written confirmation from the child welfare authorities that the matter was being investigated. F denies any knowledge of the alleged abuse.

CSA decides that the order is being contravened but that M believed, on reasonable grounds, that the contravention was necessary to protect A's health and safety. CSA accepts M's application for child support and advises both parents of the decision and their objection rights.

Some months later F contacts CSA and advises that a neighbour was convicted of abusing A. F has been exonerated. M is still caring for A and is still refusing F contact. F has moved house and wants A to live there. M states that if F let the abuse happen once, it could happen again.

CSA decides that the order is being contravened but there is no longer a reasonable excuse for the contravention. Under the terms of the court order M is not an eligible carer. CSA ends the case from the date the offender was convicted, as from that date there was no longer a reasonable belief that M's actions were necessary to protect A safety. CSA advises both parents of the decision and their objection rights.

Lawful care

If a parent is contravening a court order or parenting plan without a reasonable excuse and one parent has more care than provided for in the order or plan, that parent is taken to have the level of care provided by the order or plan (the lawful level of care) during the first 12 months of the child support period.

Actual care

If a court order or parenting plan is being contravened without a reasonable excuse and one parent has less care than provided for in the order or plan, that parent will be assessed on the level of care they actually have (the actual level of care) during the first 12 months of the child support period.

Date of effect of changes in the level of care

If CSA is notified of a change in the level of care from one category to another (e.g. shared care to major contact) the date of effect of any change to the child support assessment is the date that CSA was notified (section 74A).

However, if CSA is notified of a change in level of care that happened after the twelfth month of a child support period the change can't have any effect until the next child support period because the level of care is measured in the first 12 months of a child support period.

Example

A child support assessment is based on M having substantial contact with A and F having major contact during a child support period which runs from 1 February 2005 to 30 April 2006. On 1 March 2005 CSA is

notified of a change in A's care arrangements. A will stay with M every second week beginning from 1 April 2005. Both parents confirm the arrangement.

CSA counts the number of nights that A will have spent with M and F in February and March under the existing care arrangements, then adds the number of nights that A will spend with each parent from April to January under the new arrangements. M will have shared care of A during the first 12 months of the child support period rather than substantial contact. The date of effect of the change to the assessment is 1 March 2005 the date that CSA was notified of the change.

Example

In the 13th month of a child support period, F, a payee, advises CSA that care arrangements for A have just changed. The other parent, M, confirms that they will now have care of A for 5 nights a fortnight rather than 7 nights.

M and F shared care of A in the first 12 months of the child support period. The assessment cannot be amended to take into account the changed level of care until the start of the next child support period.

Example

In the 8th month of a child support period, F, a payee, advises CSA that care arrangements for A have just changed. The other parent, M, confirms that they will now have care of A for 5 nights a fortnight rather than 7 nights.

Despite the change in care arrangements M will still care for A for more than 40% of the nights (146) in the first 12 months of the child support period. The assessment cannot be amended to take into account the changed level of care until the start of the next child support period.

Date of effect of a terminating event in relation to the care of a child

A child support assessment must end if a parent entitled to receive child support for a child ceases to be an eligible carer of that child (section 12(2)) (See chapter 2.8 Terminating events).

Date of effect where there is a change in care of a child/ren who is shared/divided between parents.

Where care of a child/ren is shared or divided between parents, and

- a terminating event occurs for one or more child/ren, and
- CSA is not immediately advised of the terminating event, and
- both parents remain eligible carers (Subdivision E, Asst Act).

The Assessments will be modified to reflect:

- a terminating event, effective from the day that the child/ren ceased to be in the former carer's ongoing care, and
- an increase in the level of care of that child/ren to the gaining parent from the date of notification.

Disputes about a child's care

When a parent makes a claim about the level of care of a child CSA will seek to confirm the information with the other parent. If the other parent does not confirm the information CSA will ask both parents to provide details of the care arrangements since the start of the child support period and future care arrangements for the remainder of the first 12 months of the child support period.

CSA will make a decision on the basis of the information provided by parents to substantiate their claims.

Documentary records

Parents may be able to support their claims by providing a copy of a diary or other record of contact. CSA will consider a wide range of evidence provided including records of visits to health care providers or other services. CSA may also have records of past customer contact that is relevant and can utilise Centrelink information.

CSA cannot treat information from Centrelink about the percentage of care it has used in working out a parent's rate of Family Tax Benefit as conclusive evidence. Centrelink's criteria for working out the amount of

care of a child for Family Tax Benefit differ from CSA criteria. CSA will still need to ascertain the actual number of nights that a person provided care for a child in the first the first 12 months of the child support period.

Statements from third parties

CSA can consider statements provided by third parties and may contact a third party to clarify their statement if necessary. CSA will advise the third party and the parent who provided the statement that the other parent will be told the source and given details of the information contained in the statement so that they can comment on the information. If the third party or parent providing the information does not want the details provided to the other parent, CSA will not consider the statement when making a decision.

CSA will respect the privacy of parents and the children involved. It will not obtain, or have regard to, information from children. It will not contact third parties without the consent of the parent concerned and will not imply that any person is obliged to provide information to CSA. If a parent provides a statement from a third party CSA will infer that they have consented to the third party being contacted.

CSA will do everything possible to make a valid finding of fact on the basis of the information provided and obtained. However, if the evidence provided by parents is impossible to reconcile, CSA cannot be satisfied that the level of care has changed. In these circumstances, CSA will assume that the state of affairs known to it at the time it made the assessment are continuing and it will not amend the assessment.

Version 1.7

Issued 23 January 2008

< Previous Next >

4.3.6: Applications, appeals and court orders under the Registration and Collection Act

Context

A parent can appeal to a court under the Registration and Collection Act if dissatisfied with a decision of the Social Security Appeals Tribunal made about their child support case.

CSA can also appeal to a court if dissatisfied with a decision of the SSAT.

A parent can also apply to a court for a stay order under the Registration and Collection Act. A stay order can stay or affect the operation of the Assessment Act or the Registration and Collection Act.

Legislative References

Part VIII, Part VIIIA and Part VIIIB *Child Support (Registration and Collection) Act 1988*

Division 4.2.5 *Family Law Rules 2004*

Appealing SSAT decisions

A parent or CSA can appeal to a court with jurisdiction under the Registration and Collection Act if they are dissatisfied with a decision of the SSAT. An appeal can only be brought on a question of law (section 110B).

Time limits for appeals

An appeal must be brought within 28 days of receiving notice of the decision under section 103X or within further time as allowed by the court (section 110C).

Parties to proceedings under the Registration and Collection Act

The parties to an appeal are the appellant, the Child Support Registrar and any other person who was a party to the SSAT proceedings in question (section 110D).

Powers of the court

When deciding an appeal a court can make orders it thinks appropriate (section 110F), including orders:

- setting aside the decision of the SSAT
- affirming the decision of the SSAT, or
- directing the case back to the SSAT for rehearing, with or without the hearing of further evidence.

A court may dismiss a proceeding under the Registration and Collection Act if it is satisfied that the proceeding is frivolous or vexatious (section 111CA).

Implementation of a decision

When an objection decision is made, or the court or SSAT make a decision, CSA must give effect to that decision immediately (section 111V).

Effect of applying to a court on an original decision

An SSAT decision continues to have effect from the time it is made and is not affected because a person appeals that decision. CSA or the other parent may take action to collect amounts owing unless a court issues a stay order in relation to that decision.

Stay orders pending certain CSA, SSAT or court decisions

A court can make a stay order under the Registration and Collection Act which stays or otherwise affects the operation of the Assessment Act or the Registration and Collection Act (section 111C). An application for a stay order can be made if there are court proceedings on foot, if a change of assessment application is being considered by CSA, if an objection is being considered by CSA, or if the SSAT is considering an application for review.

A stay order has effect for the period specified in the order or, if no period is specified, until the decision of the court, CSA or SSAT, becomes final.

An objection decision is final if an application for review has not been made to the SSAT within the 28 day period allowed. A decision of the SSAT is final if an appeal has not been made within the prescribed period. A decision of a court is final if an appeal is not made within the time for doing so, or in the case of a decision of the Full Court of the Family Court, no application for special leave to appeal to the High Court has been made within 30 days of the decision.

Version 1.3

< Previous Next >

3.2.5: Court orders and arrears

Context

A court can make an order, or register a maintenance agreement which deals with arrears accrued under an earlier order or court-registered agreement. Sometimes the earlier order or agreement is registered with CSA for collection.

Legislative References

Sections 28 of the *Child Support (Registration and Collection) Act 1988*

Explanation

CSA sometimes receives court orders and agreements, which provide for payment of arrears and set out a schedule for payment, or they provide for payment of arrears, which relate to a period before registration or they vary an earlier order by reinstating arrears, which were previously discharged.

Orders about arrears are not orders which give rise to a periodic maintenance liability. The order may vary the liability arising under an earlier order, or simply give instructions about the repayment of the arrears.

If CSA receives an order about arrears in a case which is already registered for collection, it will give effect to the later order by varying the Child Support Register where appropriate (see chapter 3.5 Interpreting Orders under the Family Law Act for more information.

If CSA receives an order about arrears in a case, which has not previously been registered for collection, it will register the ongoing liability for collection. See chapter 5.1 CSA Collection for information about the date from which CSA will collect child support.

Version 1.2

Issued 7 March 2006

< Previous Next >

3.5.4: Orders dealing with arrears

Context

A court can make an order, or register an agreement, which deals with arrears accrued under an earlier order or court-registered agreement. Sometimes the earlier order or agreement is already registered with CSA for collection when the court makes the later order.

A court can also make an order under section 143 of the *Child Support (Assessment) Act 1989* requiring a former payee to repay to a former payer a specified amount of child support for a child of whom the former payer is not the parent.

Legislative reference

Sections 17A, 28, 30 and 36 *Child Support (Registration and Collection) Act 1988*

Sections 107, 139 and 143 *Child Support (Assessment) Act 1989*

Explanation

CSA sometimes receives court orders and agreements which provide for payment of arrears and set out a schedule for payment, or they provide for payment of arrears which relate to a period before registration, or they vary an earlier order by reinstating arrears which were previously discharged.

Orders about arrears are not orders that give rise to a periodic maintenance liability. The order may vary the liability arising under an earlier order, or simply give instructions about the repayment of the arrears.

A parentage overpayment order does not need to give rise to a periodic maintenance liability. It is a debt of a specified amount, which CSA can register for collection.

Orders that give instructions about the repayment of arrears

Orders that vary the amount of arrears under an earlier order

Orders that start a child support liability retrospectively

Parentage overpayment orders

Orders that give instructions about the repayment of arrears

When CSA registers an order for collection, the amounts payable under the order become debts due to the Commonwealth (section 30). Once an order is registered with CSA for collection, the provisions of section 30 override any payment instructions in the order.

Where an order sets out a schedule for repayment of lump sum arrears which arose during a child support enforcement period CSA cannot be bound by the terms of the order. However, CSA will take note of the arrangement and attempt to reach a payment arrangement consistent with the order. This type of order does not prevent CSA from intercepting an income tax refund (*Field and Field (1991) FLC 92227*), from negotiating a different arrangement with the payer at a later date if their circumstances change significantly, or from taking other enforcement action if appropriate.

Orders that vary the amount of arrears under an earlier order

No earlier order registered

CSA sometimes receives court orders which provide for payment of arrears arising under an order which has never been registered with CSA for collection. The order may also vary the ongoing maintenance liability. CSA will register the ongoing liability for collection. However, CSA cannot register the arrears for collection

because they do not relate to a child support enforcement period. See chapter 5.1 CSA collection for information about the day the liability first becomes enforceable.

Earlier order registered and arrears relate to period of registration

Where an order varies the arrears for a registration period to a particular amount, CSA will vary the register to reflect the order.

Earlier order registered, but arrears relate to a period before registration

Where the arrears amount specified in the order relates to both the pre- and post-registration periods, CSA must ignore any variation to arrears for the pre-registration period.

- If the court specifies the period to which the arrears amount relates, CSA will act on that basis in apportioning the arrears to the pre and post-registration periods. CSA will vary only the arrears relating to the period the order was registered with CSA for collection.
- Where the court order does not specify the period to which the arrears relate, CSA will assume that the earliest debt is being discharged first. This means that the debt for the pre-registration period is discharged before the debt for the post-registration period. CSA will maintain the arrears amount in the register.

Orders that start a child support liability retrospectively

Sometimes a court will make an order for the liability to be payable from a day sometime before the order being made (e.g. the date of the parent's application to the court). This is not the same as specifying an amount of arrears. If the payee applies to CSA for registration of the liability within 14 days of the day the order was made, CSA will enforce the liability from the start date ordered by the court. If CSA is notified more than 14 days after the order was made, it must decide from which day the liability is enforceable. See chapter 5.1 CSA collection for information about the day the liability first becomes enforceable.

Parentage overpayment orders

A parentage overpayment order is made by a court under section 143 of the *Child Support (Assessment) Act 1989*, following a declaration under section 107 of that Act. It requires a former payee to repay to a former payer a specified amount of child support for a child of whom the former payer is not the parent.

A parentage overpayment order is different to an order about arrears of child support because it is of itself a registrable maintenance liability, rather than an order which varies or gives instructions about a pre-existing periodic maintenance liability.

CSA is limited to collecting the total amount the court says is repayable in the order. Where the order specifies a schedule for repayment of the total, CSA will collect the debt in accordance with that payment schedule. However, if the payee does not pay the instalments as they fall due, CSA may take other enforcement action for any overdue amounts.

Version 1.2

< Previous Next >

3.1.3: Spousal maintenance orders

Context

The Family Law Act provides for a court to make orders for a person to pay financial support for their spouse or former spouse. This is called spousal maintenance.

Legislative References

Part VIII *Family Law Act 1975*.

Explanation

Who can apply for spousal maintenance?

A party to a marriage even if the marriage has been dissolved, or is void. (sections 71 and 72 FLA)

From whom can spousal maintenance be claimed?

The other party to the marriage (section 72 of the FLA).

How can an order be changed?

A court can vary the order in further proceedings between the parties about spousal maintenance (section 83 FLA).

When does an order end? (section 82 FLA)

When the payee dies.

If the payee remarries (unless the court orders that payments should continue because of special circumstances).

When the payer dies (unless the court made an order for lifetime maintenance before 1983).

How can I recognise a spousal maintenance order?

A spousal maintenance order typically has a clause which states:

'The husband is to pay the wife maintenance for herself in the sum of $75 per week'.

Version 1.0

Issued 1 October 2002

< Previous Next >

3.4.3: CPI indexation for cost of living

Context

Court orders and court-registered agreements often contain clauses providing for an annual adjustment of the amount payable in accordance with changes in the Consumer Price Index (CPI).

Legislative References

Sections 4 and 37 *Child Support (Registration and Collection) Act 1988*

Explanation

If a court order or court-registered agreement provides for a review of the amount payable on a specified date, the arrival of that date is an affecting event (section 4(1)).

An order or agreement with a CPI clause will generally state the date on which the comparison is to be made and the particular figures to be used (for example, the weighted average of CPI figures in all capital cities or a specific capital city). Where an order simply refers to CPI, but not a specific measure of it, CSA will use the weighted average of CPI in all capital cities from the corresponding quarter of the previous year. The Australian Bureau of Statistics publishes these figures.

Version 1.0

Issued 1 October 2002

< Previous Next >

5.2.4: Collection from social security pensions and benefits

Context

CSA can collect a payer's child support debt (other than a debt for spouse maintenance) by making deductions from social security pensions or benefits payable to that person (section 72AA).

Legislation

Section 72AA *Child Support (Registration and Collection) Act 1988*

Regulation 5E *Child Support (Registration and Collection) Regulations 1988*

Section 238 *Social Security (Administration) Act 1999*

Sections 23 and 1228 *Social Security Act 1991*

Explanation

CSA can give written notice to Centrelink to deduct amounts from a child support payer's social security pension or benefit in order to collect that person's child support debt (section 72AA of the Registration and Collection Act).

Section 238 of the *Social Security (Administration) Act 1999* enables Centrelink to comply with the notice and forward the amounts to CSA.

What is a 'social security pension or benefit'?

The terms 'social security pension' and 'social security benefit' are defined in the Social Security Act (section 23 Social Security Act). They include the following payments.

SOCIAL SECURITY BENEFIT	SOCIAL SECURITY PENSION
widow allowance	age pension
youth allowance	disability support pension
austudy payment	wife pension
newstart allowance	carer payment

sickness allowance	pension PP (single)
special benefit	sole parent pension
partner allowance	bereavement allowance
mature age allowance under Part 2.12B	widow B pension
benefit PP (partnered)	disability wage supplement
parenting allowance (other than non-benefit parenting allowance)	mature age partner allowance
	special needs pension

Centrelink cannot make deductions under section 72AA from payments that are not listed above. However, payments from Abstudy may be collected by other means.

When can deductions be made from pensions and benefits?

Section 72AA deductions **can** be made in the following circumstances:

- payers with an ongoing liability arising under the Assessment Act
- payers with child support arrears (i.e. amounts that were not paid when they fell due and payable).
- payers who have an outstanding debt under a parentage overpayment order that is registered for collection by CSA.

Section 72AA deductions **cannot** be used to collect:

- outstanding penalty amounts; and
- spousal maintenance (specifically excluded by Sub-section 72AA(4)); and
- payee debts to the Commonwealth under section 79 of the Registration and Collection Act.

However, Centrelink may recover a payee's debt to the Commonwealth by withholding amounts from the payee's social security payments (section 1228 Social Security Act).

Payers with an ongoing liability arising under the Assessment Act

Where a payer has an ongoing liability under a child support assessment and is receiving a pension or benefit, CSA can seek to collect child support payments from that pension or benefit.

CSA will commence deductions from a payer's social security pension or benefit if they have an ongoing liability, and arrears and/or a poor compliance history.

CSA will encourage a payer with no arrears of child support, and a good payment history to consider all their payment options:

- make private arrangements,
- pay CSA directly,
- have their payments deducted from their social security pension or benefit, or
- use employer withholding.

CSA will inform a payer who elects to make private arrangements or pay CSA directly that it will take immediate collection action if they fail to comply with those arrangements. If the payer defaults, CSA will notify Centrelink to deduct the ongoing liability from the payer's social security pension or benefit without prior notification to the payer.

Payers with child support arrears

Where a payer has child support arrears and is receiving a social security pension or benefit, CSA can notify Centrelink to deduct amounts from that pension or benefit until the debt is paid.

CSA can collect arrears arising in the following circumstances:

- A court-ordered liability with child support outstanding.
- Arrears relating to an assessment which is no longer continuing.
- An ongoing liability with child support outstanding.
- An outstanding amount payable under a parentage overpayment order registered for collection by CSA.

If a payer's court-ordered child maintenance liability has been suspended during a low-income non-enforcement period, CSA can continue to collect arrears from that payer's social security pension or benefit.

Payer debts to consolidated revenue which are still debts due to the Commonwealth under section 30 can also be recovered from social security pensions or benefits.

Contacting the customer

CSA will contact a payer by telephone to advise that it will start deductions from their pension or benefit. The exception is where the payer has elected to make other payment arrangements and was notified that CSA would commence deductions if they defaulted on those arrangements.

If CSA does not make contact with the payer by telephone it will inform the payer in writing that it has notified Centrelink to commence deductions from their pension or benefit.

How much can be deducted?

The 'prescribed periodic deduction' is a maximum amount of $6.14 per week (regulation 5E). CSA will not collect amounts of less than $1.00 per week from a person's pension or benefit.

If a payer's child support liability is less than one dollar per week, and there are no arrears, CSA will allow the amounts due to accumulate until it can instruct the Secretary to deduct an amount equal to the amount prescribed in the regulations.

Where a payment arrangement is in place

If a payer is complying with a satisfactory payment arrangement, CSA will not collect from their social security pension or benefit.

Collection from other sources of income

Collection from social security pensions or benefits does not preclude CSA from applying any tax refund that may become available to a payer's outstanding child support.

Where CSA becomes aware of another source of income CSA will seek to collect the liability and arrears from that source. If employer withholding, employer withholding with arrears and section 72A are a more appropriate means of collection those collection methods should be considered.

Hardship

Parliament introduced section 72AA to provide a readily-available mechanism to collect child support liabilities and arrears from payers on a social security pension or benefit. CSA will defer collection due to hardship only in exceptional circumstances.

Issuing a notice

CSA commences deductions from a payer's pension or benefit by giving Centrelink a written notice specifying:

- the payer's name,
- sufficient detail to enable Centrelink to identify the person, and
- instructing Centrelink to make the prescribed periodic deduction from that payer's social security pension or benefit from a specified day (section 72AA(1)).

CSA can issue the notice electronically or by any other means (section 72AA(3)). It is not required to provide

the payer with a copy of the notice.

Version 1.3

< Previous Next >

5.2.5: Collection from Family Tax Benefit

Context

CSA can require the Secretary of the Department of Families, Community Services and Indigenous Affairs to make deductions from Family Tax Benefit payable to a person for a child, and apply these amounts to that person's child support debt for that child.

Legislative References

Sections 17, 30 and 72AB *Child Support (Registration and Collection) Act 1988*

Explanation

A payer who provides at least 10% of the care for a child for whom they pay child support can be paid Family Tax Benefit (FTB) for that child. The payer can choose to receive their FTB entitlement as periodic payments or after they lodge their tax return.

If the payer has a child support debt for a child for whom they will receive FTB, CSA can give notice to the Secretary of the Department of Families, Community Services and Indigenous Affairs (the Secretary) requiring deductions from that FTB entitlement. This may reduce the payer's FTB entitlement to nil. Any amounts deducted are sent to CSA and applied to the payer's child support debt.

Deductions from FTB are available only to collect child support debts owed by a payer for a child for whom they will receive FTB. The Secretary will not deduct any amounts from the FTB payable to a payer for any other child. Nor can CSA recover child support debts (or child support related debts) of the following types from a payer's Family Tax Benefit:

- spousal maintenance;
- an amount repayable by a former payee under a registered parentage overpayment order;
- payee overpayments;
- estimate or late payment penalties; or
- fines or costs ordered by a court.

Before CSA can issue a notice requiring the Secretary to make deductions from the payer's FTB to recover a child support debt for a child, the due date for payment must have passed and there must be amounts overdue. A notice can have an ongoing effect on periodic FTB entitlements until the child support debt is met or the notice is withdrawn.

Where a payment arrangement is in place

Where a payment arrangement is already in place and the payer is complying with that arrangement CSA will not collect from FTB payments unless the payer defaults on the arrangement.

Collection from FTB does not preclude CSA from applying any tax refund that may become available to a payer's outstanding child support.

Contacting the customer

CSA will advise a payer when it notifies the Secretary to commence deductions from their FTB payments. CSA will do this by telephone. Where telephone contact cannot be made CSA will inform a payer by letter.

Issuing a notice

CSA commences deductions from a payer's FTB payments by giving written notice to the Secretary specifying:

- the payer's name,
- the name of each child for whom child support is owed,
- sufficient details to allow the Secretary to identify the payer and each child,
- the maximum amount that can be deducted, and
- the day or days on which deductions are to be made (section 72AB(4)).

CSA will notify the payer that collection action has commenced. The decision to issue a notice to the Secretary under section 72AB(3) is an appealable refusal decision. (See chapter 4.1.3)

Version 1.2

Issued 1 January 2007

< Previous Next >

5.2.7: Collection from third parties

Context

CSA can issue a notice to someone who owes a child support debtor money requiring that the money be paid to CSA in satisfaction of child support related debts (section 72A). This power is separate from CSA's power to intercept tax refunds or deduct amounts from a social security entitlement.

Additionally, where a person within Australia is controlling money on a child support debtor's behalf, while the child support debtor is overseas, CSA may issue a notice requiring the money be paid to CSA (section 72B).

Legislative References

Sections 62, 72A and 72B *Child Support (Registration and Collection) Act 1988*

Regulations 14 to 16 *Child Support (Registration and Collection) Regulations 1988*

Section 85 *Defence Forces Retirement Benefit Act 1948*

Section 129 *Defence Forces Retirement and Death Benefits Act 1973*

Social Security Act 1991

Section 118 *Superannuation Act 1976*

Section 41 of the *Superannuation Act 1990*

Section 10 *Superannuation Industry (Supervision) Act 1993*

Section 125 *Veteran Entitlements Act 1986*

Explanation

CSA can issue a notice to any person who holds money for, or on behalf of, a child support debtor, or to any person who may hold money for the child support debtor in the future. A notice issued to a person under section 72A requires that person to pay the money to CSA. Notices are commonly used to collect money held in bank accounts and for the proceeds of property settlements (i.e. house sale) which become due to the debtor.

A section 72A notice is similar to a garnishee order obtained from a court by a creditor who has obtained judgment against a debtor. However, CSA does not need the approval of a court or to have obtained judgment prior to issuing a notice under section 72A. Notices under section 72A should not be issued on a speculative or 'fishing' basis.

A section 72A notice will require a third party to pay to CSA, until the debt is satisfied:

- an amount equal to the maximum notified deduction total (if a person holds more than the maximum notified deduction total specified in the notice (section 72A(1)(e))
- the amount of money being held (if the person holds an amount equal to, or less than, the maximum notified deduction total (section 72A(1)(f))
- specified ongoing payments (if the person becomes liable, from time to time, to make payments to the debtor - that amount until the maximum notified deduction is satisfied (section 72A(1)(g)).

For the purposes of section 72A(1) the maximum notified deduction total is an amount specified in the notice that does not exceed the support debt of the child support debtor.

CSA can also issue a section 72A notice requiring a person who makes regular payments to a child support

debtor to deduct a part of each payment and pay it to CSA. This allows CSA to collect from contractors who make payments to a subcontractor in a manner similar to a garnishee order made by a court.

Which debts can be recovered?

CSA can issue a section 72A notice to recover:

- an overdue child support debt, including an amount equivalent to any child support that CSA has already paid to the payee from consolidated revenue because it was expected to have been remitted by the payer's employer, but was not in fact deducted from the payer's salary; (i.e. a 'top-up' debt);
- arrears of child support that CSA has assessed for a prior period, but which are payable in the future;
- a payer's late payment penalties;
- an employer's late payment penalties;
- an employer's penalty for failure to make a deduction;
- court-ordered costs or other amounts payable to the Commonwealth or CSA in relation to an offence committed by the debtor under the Act.

CSA can also use a section 72A notice to recover any child support due for the current month although not yet payable, however, it will only do so in special circumstances.

A section 72A notice cannot be used to recover other types of debts, such as:

- a payee's estimate penalty;
- a payee's child support overpayment (other than a parentage overpayment order, which CSA has registered for collection as a child support debt)
- court-ordered costs payable to the Commonwealth or CSA in relation to proceedings to collect child support debts from payers;
- amounts of child support that may become due in the future (other than those amounts for the portion of the current month that has already passed); and
- employer penalties for unexplained remittances.

What funds can be attached?

A notice under section 72A is only effective where funds can be identified as owed to a child support debtor and there is nothing that prevents the operation of the notice.

Is a notice effective against a joint bank account?

A notice under section 72A cannot be effective against a joint bank account because it is not possible to identify any portion as belonging solely to one owner *(DFC of T v Westpac Savings Bank Ltd 87 ATC 4346)*.

Is a notice effective in relation to partnership funds?

Funds held by a partnership are held jointly by the members of the partnership. However, it is possible to serve a section 72A notice on a partner in relation to any distribution that they may make to the other partner/debtor.

Is a notice effective against an account held in trust?

If a payer is a trustee of funds held in a bank account, a section 72A notice to the bank in relation to those funds will not be effective. A trustee holds the trust funds for the benefit of others and does not own the funds for their own use.

CSA can issue a section 72A notice to a trustee who holds money in trust for a payer. That notice will only be effective when the trust deed authorises the trustee to make a distribution or payment to the child support debtor from the trust funds.

Is a notice immediately effective against funds in a term deposit?

CSA can require payment from a term deposit upon receipt of a section 72A notice where the terms and conditions of the term deposit allow for the customer to be paid the monies prior to the maturity date (i.e., they are repayable upon demand) (section 72A(12) and *Macquarie Health Corp Ltd v Commissioner of Taxation* [1999] FCA 1819).

Is a notice effective against superannuation funds?

A section 72A notice may not be effective against pensions or lump sums paid by a superannuation fund or in relation to funds held. It will depend on the particular fund and the status of the money held.

Does the fund have a specific exemption from compliance?
Some superannuation funds were established by legislation which provides a specific exemption from compliance with garnishee notices.

Examples

- Section 118 of the *Superannuation Act 1976* and section 41 of the *Superannuation Act 1990* specifically preclude garnishee action on any type of pension or other benefit under those Acts (CSS and PSS pensions paid to former Commonwealth Public Servants).
- Section 85 of the *Defence Forces Retirement Benefit Act 1948* and section 129 of the *Defence Forces Retirement and Death Benefits Act 1973* will not allow section 72A notices to be attached to benefits payable by the Defence Forces Retirement Benefit Board.

Funds that are not specifically exempt from compliance
A superannuation fund holds superannuation money on trust for the benefit of its members (i.e. the contributors) (section 10, Superannuation Industry (Supervision) Act 1993).

As a general rule a superannuation fund will be required to comply with a section 72A notice where the member has access to the funds (i.e. when the funds are 'due and payable' to the child support debtor).

Are the benefits payable to the member?
The rules which apply to all superannuation funds when determining whether or not the benefits are actually payable to the member are as follows:

Unrestricted non-preserved amounts
If a member has access to 'unrestricted non-preserved amounts' (e.g. where they have an option of receiving an immediate payment or rolling funds over) these funds are 'due and payable'. Therefore, a section 72A notice will be effective against any superannuation funds held as an 'unrestricted non-preserved amount'. It is not necessary for the contributor to actually make a request for payment or decide whether to roll over the funds in order for the section 72A notice to be effective (subsection 72A(12)).

Other amounts
Where the funds are not available (preserved amounts) or other conditions are not met (restricted non-preserved amounts), a section 72A notice will not be effective. In such cases, section 72A(12) cannot overcome the legal requirement for the contributor to qualify to access those funds (for example by age or retirement). The notice will not be effective unless and until the debtor-member's benefits are payable to the debtor under the rules of the fund (e.g. by retirement).

Deceased member benefits
A superannuation fund holds superannuation money on trust for the benefit of its members (the beneficiary) (section 10 Superannuation Industry (Supervision) Act 1993). If the member dies, the superannuation fund no longer holds the money on trust for the member. If the money is preserved it is usually paid as a death benefit to the member's dependants or legal personal representative, in accordance with superannuation law and the superannuation trust deed.

If the superannuation trustee decides to pay the death benefit to the deceased person's dependants, the beneficial ownership of the money passes to the dependants from the time of the member's death (even

though the decision about the person(s) to whom the money will be paid may not be made until after this date). The superannuation fund will no longer hold money for, or on account of, a child support debtor and a section 72A notice will not be effective.

If the superannuation trustee decides to pay the death benefit to the member's legal personal representative, the superannuation becomes an asset of the deceased person's estate from the time of the member's death (even though the decision about the person(s) to whom the money will be paid may not be made until after this date). The superannuation fund will no longer be holding money for, or on account of, a child support debtor; the money is 'not due and payable' to the child support debtor and a section 72A notice will not be effective. However, CSA will seek to recover any outstanding debt from the person's estate.

Employer withholding of superannuation funds

If a section 72A notice can be effective against a pension paid by a superannuation fund, it may be possible to apply employer withholding as an alternative. See chapter 5.2.3 for details.

What if a solicitor claims they have a lien over the funds?

CSA can issue a section 72A notice to a solicitor for funds held in trust for a child support debtor who is that solicitor's client. The notice will not be effective against any portion of the funds that are subject to a solicitor's lien for work performed and disbursements paid on behalf of their client. A solicitor's lien creates a charge over the funds once the solicitor has delivered their bill of costs to the client (or if the client objects to the bill, when the costs are taxed) *(Gilshenan & Luton v FC of T, 83 ATC 4758)*.

Can a notice be issued against a Court if it holds money for the payer?

CSA cannot issue a section 72A notice to a court, as a court is not a 'person' (*Clyne v DFC of T*, 83 ATC 4007). CSA cannot therefore require a court to pay any amounts lodged by the payer for bail moneys, etc.

Can CSA obtain money from Veterans' Affairs pensions?

The Department of Veterans' Affairs cannot comply with a section 72A notice requiring it to deduct an amount from a person's Veterans' Affairs pensions, as these pensions are 'absolutely inalienable' (Sub-section 125(1) *Veteran Entitlements Act 1986*).

Can a notice be issued to Centrelink?

The *Social Security Act 1991* prevents Centrelink from withholding their customers' entitlement to a pension, allowance or benefit paid under that Act for the purposes of child support except where section 72AA applies.

However, section 72A notices may be served on Centrelink requiring deductions to be made from Abstudy payments. CSA has undertaken to limit deductions from Abstudy payments to the amount prescribed for the purposes of section 72AA.

Notices issued against inalienable benefits in a bank account

Once inalienable benefits (such as Department of Veterans' Affairs pensions or Centrelink pensions, benefits or allowances) are deposited in an account the funds cease to be inalienable. Therefore a section 72A notice issued to a financial institution that holds money on account of a child support debtor will be effective, provided those amounts are due and payable to the child support debtor, regardless of the original source of those funds.

Can CSA intercept payments to taxi drivers?

CSA can issue a section 72A notice to a taxi owner requiring them to deduct amounts from payments they make to a contracted or employed driver. However, a section 72A notice will not be effective against a taxi cooperative from which a taxi driver hires their cab. A cooperative does not usually pay wages, fees or contract payments to a driver.

Can CSA issue a notice in relation to Commonwealth Inscribed Stock or Bearer Securities?

Section 72A notices should not be issued to the Registrar of Inscribed Stock as the registrar is not a 'person'.

Can a notice be issued in relation to travellers' cheques, foreign currency, shares or gold?

A section 72A notice cannot be effective against a third party who holds travellers' cheques, foreign currency, shares or gold for a payer. This is because these things are commodities and are not 'money'.

Can CSA issue a notice against Health Insurance Commission payments to a doctor?

CSA is legally able serve notices to the Health Insurance Commission requiring it to deduct amounts from 'pay doctor cheques' but will not do so. 'Pay doctor cheques' are payments made under section 20(2) of the *Health Insurance Act* 1973 where the practitioner has billed the patient and the patient is entitled to receive a cheque for the amount of Medicare benefit which is drawn in favour of the practitioner who has rendered the service. This is due to the administrative problems involved and the anticipated adverse effects on the patients whose doctors may have had payment stopped on their cheques.

What if a property is mortgaged?

A section 72A notice creates a fixed charge on all money due from the third party to the payer to the extent of the liability. However, the charge created by the service of a notice does not rank ahead of any existing fixed charges, e.g. mortgages.

A notice will rank ahead of floating charges which have not yet crystallised at the time the notices were served (*Tricontinental Corporation Limited and Anor. v FCT, 87 ATC 4454)*. A floating charge is a security over a class of assets which change from time to time until they are fixed by an event or act such as liquidation.

A section 72A notice issued in respect of the sale of property that is subject to an existing mortgage will not be effective against that part of the purchase price necessary to pay out the mortgage.

What if the payer is bankrupt?

A section 72A notice issued in respect of money payable by a third party to a bankrupt person will only be effective if the amount claimed does not come within the scope of the bankrupt's estate managed by the trustee. For more information on the effect of bankruptcy, see chapter 5.4.5 Bankruptcy.

Is a notice effective against a life insurance policy?

Section 205 of the *Life Insurance Act 1995* applies upon the death of an insured person. It protects money that would be payable under a life insurance policy to that person's estate preventing it from being applied to pay the insured person's debts. Without the express direction of the deceased person any order, judgment, or process of any court, executor or administrator, etc. is ineffective against the funds.

In any event, the beneficiary of a life insurance policy is often not the insured person's estate, but a nominated person, e.g. the person's spouse. When the insured person dies the funds are payable directly to the nominated person.

Effect of compliance or non-compliance

Any person who pays money to CSA as required by a notice under section 72A is taken to be acting under the authority of the payer and is indemnified for any moneys paid to CSA (section 72A(9)).

A person who refuses or fails to comply with a notice without reasonable excuse is guilty of an offence (section 72A(2)) and can be prosecuted. A fine up to $1,000 can be imposed on prosecution. 'Refuses or fails' simply means that a prosecution can commence if the person did not comply with the requirement after being served (or deemed to be served in the case of postal service). The offence occurs regardless of the intention of the person.

If a person is convicted of an offence under section 72A(2), the court may also order the person convicted to pay the amount which the person refused or failed to pay under the notice (section 72A(8)). This has the dual purpose of encouraging compliance and protecting the interests of the payee entitled to child support.

CSA will credit to the payer's child support account any amount it receives from a third party in restitution for that third party's failure to comply with a section 72A notice. It will do so regardless of whether the third party makes this payment voluntarily, or in accordance with a court order. CSA will disburse to the payee any amount of that restitution payment that represents unpaid child support (but not late payment penalties or court costs) as if the amount were paid by the payer.

Requirements of a section 72A notice

The formal requirements of a section 72A notice are outlined in section 72A(3). The notice must be in writing, and specify a day by which the payment is to be made. The due date cannot be a date before the person

holds money for a child support debtor. This is a common sense limitation on the power although CSA can issue a notice to a person before they hold money for the debtor, it cannot require the person to pay it to CSA before they actually hold it.

A notice is valid even if, at the time it is issued, no funds are held by the third party.

Example

> CSA may be aware that a payment is expected to be deposited into a particular bank account. A notice issued to the bank should specify a date by which the payment must be made (usually within 7 days of the money becoming due to the debtor or held for the debtor). The notice is valid until this day, even though the bank cannot comply with the notice when it is issued because the account is empty. The bank is under an obligation to monitor that account until the date for payment arrives; any deposits to the account before that date are subject to the payment order in the notice, up to a maximum amount of the child support debt stated in the notice.

If CSA wants to extend the date by which payment is to be made, the old notice should be withdrawn in writing and a new notice issued showing the new date, and an update of the amount payable if necessary.

A section 72A notice for wages or contract payments must not require deductions to the extent that they prevent the payer from meeting reasonable living expenses (*Edelsten v Wilcox 88 ATC 4484)*. CSA must consider the whole of the debtor's financial position. The debtor must be allowed ordinary living expenses unless there are extraordinary circumstances.

CSA must give a copy of a section 72A notice to the child support debtor (section 72A(5)). CSA will do this by posting a copy of the notice to the payer at their last known address (section 72A(6)). CSA will generally do this when it serves the notice on the third party.

Service of notices

CSA must serve the notice on the third party. The requirements for service are discussed in chapter 6.7 Service of documents.

Payment made by payer

If a payer pays their child support debt after CSA serves a section 72A notice upon a person, CSA must give immediate written notice of the payment to the person it served with the notice (section 72A(10)).

Collection within Australia where payer is outside Australia

CSA can serve a section 72A notice upon a person within Australia who controls money for a payer outside Australia. However, section 72A notices are restricted in their operation and only apply to amounts already due to the CSA.

CSA also can issue a notice under section 72B upon a person within Australia who controls money for a payer outside Australia. However, a section 72B notice can be used to collect current amounts of child support, before they become overdue.

A section 72B notice can be used when the debtor is not physically present in Australia (s.72B(1)(a) and:

- derives income, profit or capital gains from a source in Australia (s.72B(1)(b)(i); or
- is a shareholder, debenture holder or depositor in a company that derives income, profit or capital gains from a source in Australia (s.72B(1)(b)(ii).

If these criteria apply, CSA can serve a section 72B notice upon any third person who receives, controls or disposes of any of the debtor's money (s.72B(c)).

A section 72B notice is not effective against money derived from certain natural resource payments or royalty payments (s.72B(4)(b)).

Like a section 72A notice, a section 72B notice must specify the amount the person is required to retain and send to CSA; the amount of the debt, and the due date for payment.

Version 1.6

Issued 1 January 2008

< Previous Next >

2.4.10: Incomes used in a child support assessment

Context

CSA determines a child support income amount by reference to a parent's taxable income and supplementary amount as assessed by the Australian Taxation Office (ATO). If the ATO has not assessed a parent's taxable income, CSA can decide on an appropriate child support income amount.

Legislative References

Subdivision A of Division 3 of Part 5, sections 56 to 58 *Child Support (Assessment) Act 1989*

Regulation 7 *Child Support (Assessment) Regulations 1989*

Income Tax Assessment Act 1936

Income Tax Assessment Act 1997

Explanation

CSA must use a parent's taxable income and supplementary amount to decide their child support income amount where a taxable income has been assessed.

The Assessment Act also covers situations where a parent's taxable income:

- is amended,
- is nil,
- is not able to be ascertained.

A taxable income has been assessed

Where the ATO has assessed a parent's taxable income for the last relevant year of income CSA will use that income to make a child support assessment (section 56(1)). If the ATO issued an amended assessment of a parent's taxable income for the last relevant year of income before CSA makes the assessment, CSA will use the income shown in the amended assessment.

If ATO amends a parent's taxable income after CSA makes a child support assessment

Once CSA has made a child support assessment it will disregard any subsequent changes to the person's taxable income (section 56(2) and (4)) except where the Commissioner amended the person's assessment because of tax avoidance or under a prescribed provision of the Income Tax Assessment Act (section 56(3) of the Assessment Act, regulation 7 of the Assessment Regulations).

If the ATO issues an amendment that increases a parent's taxable income this is taken to be an avoidance of tax, whether the avoidance was intentional or not. CSA will amend the child support assessment from the start of the child support period to reflect the amended taxable income.

On 14 February 2002, the Commissioner of Taxation announced that taxpayers whose tax assessments were amended because of their investment in a mass-marketed scheme could claim a deduction for certain actual cash outlays. The Commissioner wrote to the affected people and subsequently amended the assessments for any taxpayer who accepted the proposal. Despite the fact that these amendments result in a decrease of tax payable, CSA can also take them into account (regulation 7(1A)).

Example

The ATO issues a tax assessment for M. M's taxable income is assessed as $38,000. Before

CSA makes a child support assessment, the ATO amends M's taxable income to $45,000. M lodges an objection to the amendment with the ATO. CSA makes a child support assessment and uses the last taxable income assessed, $45,000. One month later the ATO allows M's objection and reduces M's taxable income to $38,000. The child support assessment is not affected. M could apply for a change of assessment. (See chapter 2.6).

Example

The ATO issues a tax assessment for F. F's taxable income is assessed as $38,000. CSA makes a child support assessment and uses the last taxable income assessed, $38,000. The ATO then amends F's taxable income to remove the tax benefits from a tax avoidance scheme, increasing F's taxable income to $68,000. CSA will amend F's child support assessment from the start of the child support period to reflect the amended taxable income.

A nil taxable income

Where a parent has a nil taxable income determined under the tax legislation their taxable income is taken to be nil for child support purposes unless they have a supplementary amount for that year of income (section 57).

Taxable income and supplementary amount can't be ascertained

If a taxable income is not available, CSA can decide on an appropriate income to use in a child support assessment (section 58). The income used is also described as a default income.

Where a parent's taxable income and or supplementary income cannot be readily ascertained and CSA or ATO has:

- been provided with information, CSA can act on the basis of that information to decide the person's taxable and/or supplementary income (sec 58(1A)).
- required the person to provide a return or information or documents for the purpose of ascertaining those incomes, and the person has not complied, CSA can act on the basis that the person's taxable and/or supplementary income is an amount that CSA considers appropriate (sec 58(1)).

Information provided

If a parent has not lodged an income tax return for the relevant year but has provided CSA or the ATO with details of their taxable income and/or supplementary amount (either orally or in writing) CSA will generally act on the basis of that information.

CSA will not use the information to make an assessment if it has other evidence to the contrary and cannot rely on the information provided to ascertain a parent's taxable income.

Ascertaining an income if information is not provided

If CSA cannot readily ascertain a parent's taxable income and/or supplementary amounts, it will decide on an income to be used in an assessment (a default income).

A parent who receives an assessment based on a default income can give CSA their income details. CSA will amend an assessment made using a default income if it receives or obtains better information at any time after the assessment is made.

CSA will decide on an appropriate income in the following way:

Firstly, CSA will seek information about the person's taxable income and supplementary amount from sources such as Centrelink, ATO employment and audit information, an employer, change of assessment information or an estimate election.

If the ATO has decided that it is not necessary for a parent to lodge an income tax return for the last relevant year of income, the ATO may have information about the parent's income.

CSA will take into account taxable income from all sources. Where CSA has information for part of a year, it will base a default income on that information and a pro rata amount of median income. A median income is the mid-range income of child support customers.

Example

> CSA only has information about F's income for 3 months from 1 August to 31 October 2001. A default income can be calculated on:
>
> 3 months income + 9 months median income.

However, if a parent received a Centrelink pension or benefit for at least 10 months of the relevant year, and CSA is unable to identify any additional income, CSA will use the amount of pension or benefit received for that year as the income.

CSA will use all available income information to ensure that the amount of income used reflects the parent's taxable income and supplementary amount for the last year of income as closely as possible.

If necessary CSA will use income information for prior years (for a maximum of 3 years), e.g., if a parent lodged an income tax return for the 1995-1996 financial year or provided income tax details for that year CSA can use that information to decide on an appropriate amount for the 1998-1999 year. CSA will inflate an income from a previous year by using the appropriate inflation factor.

CSA can also use statistical information about the average wage for the parent's occupation to determine an appropriate amount. The Australian Bureau of Statistics publishes tables of average weekly earnings for major occupations and industries.

In the absence of any other information, CSA will use the specified median income for child support customers for the last relevant year of income as the default income.

If a payer has made no payments (either to CSA or to the payee) by the end of a child support period for which the assessment was based on a median default income CSA will consider amending the assessment to a nil default income. CSA will not amend a default income to nil without contacting the payee and giving them the opportunity to provide any relevant information. If the payee has no information CSA will reduce the income to nil.

If CSA has reduced a default income to nil, it will review the assessment every 6 months to see whether any further information is available.

Subsequent information

If CSA has based a parent's child support assessment on a default income, and the parent's income taxable and/or supplementary income is later ascertained, then CSA must immediately amend the child support assessment on the basis that the taxable and/or supplementary income is and always has been the taxable income (section 58(2)).

CSA can ascertain a taxable income in this situation even if the ATO has not made an income tax assessment. It can act on information that provides a better basis for a default assessment.

However, CSA will not amend an assessment if a parent provides details of income and supplementary amounts and CSA has other evidence that suggests that the information provided is incorrect.

Example

> M's taxable and supplementary incomes cannot be ascertained because M hasn't lodged a tax return for the relevant year. CSA has asked M to provide details of taxable and supplementary incomes for the relevant year but M doesn't provide the details requested. CSA can make a child support assessment using an income amount it considers appropriate. CSA decides to use an amount of $32,000 based on M's past income history. M later lodges a tax return. CSA is advised that M's taxable income is $38,000 and that there is no supplementary income. CSA must amend the child support assessment to reflect M's taxable income of $38,000.

Version 1.4

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.1.2: Delegation of powers

Context

The Registrar has delegated his statutory powers under the Child Support legislation and other Acts to certain CSA officers.

Legislative reference

Section 15 *Child Support (Registration and Collection) Act 1988*

Sections 149 and 151A *Child Support (Assessment) Act 1989*

Financial Management and Accountability Act 1997

Explanation

The Assessment Act and Registration and Collection Act explicitly authorise the Registrar to delegate their statutory powers and functions under those Acts to officers and employees of the Child Support Agency.

The Registrar has issued written instruments delegating their powers under the Assessment Act and the Registration and Collection Act (except the power to delegate) to CSA's Assistant General Managers and State Managers (See Instrument of delegation). Delegates can exercise a delegated power in their own names and according to their own discretion.

The Registrar has also delegated their powers under Part 6A and section 161 of the Assessment Act to Senior Case Officers engaged to deal with change of assessment applications. (See Instrument of Delegation to Senior Case Officers 2007/1). This delegation is subject to a power of review and alteration, with the Registrar able to change a decision within a period of 6 years of that decision being made.

The Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs has delegated his power under the *Financial Management and Accountability Act 1997* (FMA Act) (see details of financial delegation).

Version 1.4

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.2.8: Departure prohibition orders

Context

CSA can make a departure prohibition order (DPO) preventing a child support debtor from leaving Australia.

Legislation

Sections 17, 17A, 30 and 72D to 72Y (Part VA) *Child Support (Registration and Collection) Act 1988*

Section 7 *Crimes Act 1914*

Explanation

Part VA of the Registration and Collection Act gives CSA the power to make a departure prohibition order (DPO). A DPO prevents a person from leaving the country. A DPO places significant restrictions on the normal liberties enjoyed by citizens and residents of Australia, and will not be made without consideration of all relevant circumstances.

Where a DPO is in force CSA can vary or revoke it, or can issue a departure authorisation certificate (DAC). Part VA also provides for appeal and review rights in relation to DPOs and DACs.

Making a DPO

Revoking a DPO

Varying a DPO

Issuing a DAC

Appeals and review

Offences

Making a DPO

The Registrar has delegated certain senior CSA officers to exercise his powers and functions under Part VA of the Registration and Collection Act. See chapter 6.1 for further information on those delegations.

CSA can make a DPO where all of 4 specified conditions are satisfied (section 72D). These conditions are:

- the relevant person has a child support liability,
- the relevant person has not made satisfactory arrangements to wholly discharge the liability,
- CSA is satisfied that the person has persistently and without reasonable grounds failed to pay child support debts (as distinct from spousal maintenance debts),
- CSA believes it is desirable to make such an order to ensure that the person does not leave Australia without wholly discharging the liability or making satisfactory arrangements to do so.

CSA has a discretion to make a DPO when these conditions are satisfied.

Australia has entered reciprocal arrangements for the enforcement of child support liabilities with a range of foreign jurisdictions. However, the fact that a child support debtor's suspected destination is (or is not) a reciprocating jurisdiction is not a relevant factor for CSA to take into consideration when exercising the discretion to issue a DPO.

CSA will make every effort to ensure that a child support debtor receives a copy of the DPO as soon as possible after it is made. This will include trying to obtain a Facsimile number where the DPO can be faxed to the child support debtor, in advance of service by ordinary post.

Copies of DPOs and DACs will be provided to Australian Federal Police and also to Immigration Officers where the person is not an Australian citizen. These officers, or the Australian Customs Service, will prevent the departure of a person subject to a DPO.

The relevant person has a child support liability

A person has a child support liability if (section 72E):

- they have a registrable maintenance liability of the following kind:
  - a child support assessment (section 17(2));
  - a liability to pay periodic child maintenance arising from a court order or court-registered maintenance agreement or a collection agency maintenance liability (section 17(1)); or
  - a parentage overpayment order (section 17A) ;(but not a spousal maintenance liability).

AND

- the liability is a debt due to the Commonwealth under section 30 of the Registration and Collection Act and at least part of the debt remains unpaid past the date it was due for payment.

The person has not made satisfactory arrangements

The CSA must consider whether the person has made a satisfactory arrangement to wholly discharge the debt.

What constitutes a satisfactory arrangement will depend on the facts of the case. If a satisfactory arrangement is in place, CSA will not make a DPO.

CSA is satisfied that the person has persistently and without reasonable grounds failed to pay child support debts

CSA will not make a DPO unless it is satisfied that the person's failure to pay their child support is both persistent and without reasonable grounds (sections 72D(1)(c)).

Persistence requires deliberate and repetitive or sustained action in the face of opposition. CSA must have regard to a number of factors when forming a view that the debtor's actions (or inaction) amount to persistent behaviour without reasonable grounds (section 72D(2)). The specific factors are:

- *the person's capacity to pay the debt or debts*: If the person has no capacity to pay the debt, their failure to pay cannot be regarded as persistent and without reasonable grounds. CSA will take into account the debtor's statements about their financial position and any findings in relation to ability to pay, e.g. change of assessment decisions. CSA will expect a debtor to use all available options to ensure the liability is correct and appropriate to their circumstances before claiming inability to pay the debt.
- *the number of occasions on which action has been taken to recover such debts, and the outcome of the recovery action*: If CSA has taken no action (legal or administrative) to recover the debt, persistence is not present. Unsuccessful action may suggest that the debtor does not have the ability to pay the debt, but this is not to be regarded as conclusive evidence.
- *the number of occasions a debt was not paid by the due date (if the outstanding debt is for period child support or child maintenance)*: Where a child support debtor has arrears of child support from one periodic payment that was not paid on time and there is no other significant history of late payment, persistence is not present.
  Where a child support debtor has arrears of child support from one periodic payment that was not paid on time and there is a significant history of late payment, persistence may be present if the other relevant factors are satisfied.
  Where a child support debtor has arrears of child support made up of a number of periodic payments which were not paid on time, persistence may be present if the other relevant factors are satisfied.
- *the length of time the debt has been unpaid after the due date (if the outstanding debt arises from a parentage overpayment order).*

such other matters as CSA considers appropriate : These matters are not defined, and relate to the circumstances of the particular case. Officers making decisions on a DPO may consider other relevant factors, but must clearly document the factor, its relevance to the decision, and the impact it has on the

decision.

CSA believes it is desirable to make a DPO

The purpose of a DPO is to secure payment of a child support debt. CSA will not make a DPO unless there are grounds for the reasonable belief that making the order will make payment of the debt more likely.

If a child support debtor is about to leave Australia (regardless of any plans to return) CSA will consider whether to make a DPO. CSA will generally make a DPO if satisfied on the balance of probability that the debtor has the ability to discharge their liability, and is either:

- likely to fail to return to Australia without discharging his or her liability or making satisfactory arrangements to do so, or
- discharge his or her liability or make satisfactory arrangements to do so if a DPO is made.

A DPO may be appropriate if the debtor:

- is transferring assets offshore, either directly or indirectly, e.g. borrowing funds overseas by securing Australian assets,
- has resources (whether financial or otherwise) that would enable them to live offshore, e.g. family, assets, employment or a business,
- is likely to discharge the debt or make satisfactory arrangements for discharge of the debt if a DPO is made.

A DPO may be inappropriate if the debtor

- retains significant assets in Australia,
- retains a job in Australia,
- retains family ties in Australia.

Revoking a DPO

Once a DPO is made, CSA must revoke it in certain circumstances and may revoke or vary it in other circumstances (section 72I). CSA can revoke or vary a DPO in response to representations made by the child support debtor or because of CSA becoming aware of new information.

When CSA must revoke a DPO

CSA must revoke a DPO when **both** of the following 2 tests are satisfied.

The first test has two alternative parts: either

- the child support liability has been wholly discharged or that satisfactory arrangements have been made to discharge the debt.

OR

- CSA is satisfied that the child support liability is completely irrecoverable. If either of these conditions is present, the first test is satisfied.

AND

The second test applies to future child support liability. The second test also has two alternative parts: either

- CSA is satisfied that any child support liability to which the person may become subject in respect of matters that have already occurred will be wholly discharged

OR

- or that satisfactory arrangements will be made to discharge those liabilities. The second part is that CSA is satisfied that any such child support liability will be completely irrecoverable. If either of these conditions is present, the second test is satisfied.

When CSA may revoke a DPO

Even where the tests outlined above are not satisfied CSA still has discretion to revoke a DPO. CSA will

exercise the discretion to revoke a DPO only where satisfied that the debtor will return to Australia and will not dissipate assets overseas.

Varying a DPO

CSA also has discretion to vary a DPO. CSA will only vary a DPO to correct errors on the face of the order.

CSA will not use the discretion to vary a DPO to allow the departure from Australia of a child support debtor. Where CSA is satisfied that it is appropriate and necessary for a debtor to depart Australia, it will either revoke the DPO or issuing a DAC.

Issuing a DAC

Where a DPO is in force, a child support debtor can apply for the issue of a DAC. A DAC allows a child support debtor to depart Australia despite a DPO being in force.

CSA must issue a departure authorisation certificate in 3 situations where:

- a debtor is likely to depart and return, revocation is likely, and security is not necessary
- a DAC is issued on security
- a DAC is issued on humanitarian grounds or in Australia's interests

There is no discretion to issue a DAC in other situations.

Date of issue of a DAC

A DAC authorises the departure of a child support debtor on or before the 7th day after a date specified on the notice. The date specified on the notice must be a day after the date the certificate issues, but cannot be more than 7 days after the day the certificate issues. To avoid possible confusion, CSA will specify the date on the DAC as the date the child support debtor nominates as the intended day of departure. This means the DAC can be issued no earlier than 7 days prior to the specified date. The DAC will authorise the debtor to depart during a period of up to 15 days from the date of issue of the notice (inclusive).

Example

> F has satisfied CSA that he needs to depart Australia on humanitarian grounds. CSA is going to issue a DAC. F has nominated 7 September as the date he intends to depart. CSA issues the DAC on 31 August. If F's travel plans change, he can depart as early as 31 August or as late as 14 September without the need to apply for a new DAC.

DAC where debtor is likely to depart and return, revocation likely, and security not necessary

CSA is required to issue a DAC when satisfied that (section s72L(2)):

- if the DAC issues, it is likely that the child support debtor will depart from Australia and return within an appropriate period; and
- if the DAC issues, it is likely that CSA will be required by section 72I(1) to revoke the DPO; and
- it is not necessary for the person to give security for their return to Australia.

DAC issued on security

CSA is required to issue a DAC when the child support debtor has given security, under section 72M, for their return to Australia (section 72L(3)(a)). Security can be given by a bond or a deposit or by other means. The effect of a security is that the amount of the security will be forfeited to CSA if the debtor does not return by the agreed date.

CSA will apply forfeited securities against the amount owing by the child support debtor. Any instruments prepared in relation to the giving of a security must include an acknowledgment by the debtor that any forfeited security will be applied against the child support debt.

CSA will only accept a security that:

- is in a form that is readily convertible to cash,
- is offered by the debtor rather than third parties on the debtors behalf,
- is not significantly less in value than the amount of the debt owing.

The onus is on the child support debtor to satisfy CSA that it is appropriate to accept the security rather than require the debtor to realise the asset and discharge the debt. In cases where the debt is disputed and the debtor is taking action to resolve the dispute a security may be appropriate. Where there is no dispute, or where the debtor is not taking action to resolve a dispute, the use of the funds to discharge the debt would generally be more appropriate than their use as a security.

DAC issued on humanitarian grounds or in Australia's interests

CSA must also issue a DAC where satisfied that:

- the certificate should be issued on humanitarian grounds, or
- refusing to issue the certificate would be detrimental to Australia's interests.

Humanitarian grounds include compassionate grounds.

Example

> Where the certificate is required to enable the debtor to visit sick relatives and CSA is satisfied that the debtor is likely to return to Australia, the issue of a certificate may be justified (*Crockett v FCT* 99ATC 2218).

Claims that refusing to issue a certificate would be detrimental to Australia's interests will be dealt with on their merits. The onus is on the child support debtor to satisfy CSA that refusing to grant a DAC would be detrimental to the national interest.

Appeal and review

Internal review mechanisms

There are no formal objection rights in relation to DPOs or DACs.

A child support debtor subject to a DPO may apply to CSA to have it revoked or varied. These applications are not an avenue for review of the original decision and are to be decided on the basis of facts in existence at the time the decision on the application is being made.

A child support debtor subject to a DPO may apply to CSA for the issue of a DAC. These applications are not an avenue for review of the original decision and are to be decided on the basis of facts in existence at the time the decision on the application is being made.

There is nothing to prevent a child support debtor making applications for revocation or variation of a DPO subsequent to an unsuccessful application. Each such application will be dealt with on its merits in the light of the facts prevailing at the time a decision is made.

Appeal to the Federal Magistrates Court or the Federal Court

A person aggrieved by the making of a DPO can appeal to the Federal Magistrates Court or the Federal Court against the making of the order (section 72Q). The court can either dismiss the application or set aside the DPO. The Court can determine whether an order is properly made, but cannot exercise the administrative decision-making powers granted to CSA (*T v FCT 86 ATC 4894)*.

Review by AAT

Decisions made by CSA to revoke or vary a DPO (section 72I), to provide a DAC (section 72L) and to obtain security (section 72M) are subject to review by the AAT. The AAT can exercise discretions granted to CSA.

Offences

It is an offence for a person to depart from Australia for a foreign country:

- knowing, or reckless as to whether, a DPO is in force, and
- where the person knows the departure is not, or is reckless as to whether the departure is, authorised by a DAC (section 72F).

An attempt to commit any of these offences are punishable as though the actual offence had been committed (section 7 Crimes Act).

Any offences are likely to be detected by police, customs or immigration officers, rather than child support

officers. CSA will provide whatever assistance is necessary for the successful prosecution of any offences detected.

Completely irrecoverable

A debt will be regarded as completely irrecoverable when there is no prospect that the debtor will be able to make any payment towards it.

Satisfactory arrangements

Those arrangements that lead CSA to be satisfied that the debt will be wholly discharged are satisfactory arrangements. A common sense approach will be required to determine whether arrangements are satisfactory in each case. Where a payment arrangement is in place, that effectively requires the presence of the debtor in Australia to function, this would not constitute a satisfactory arrangement. Where the debtor has sold property and needs to leave Australia before settlement occurs, a section 72A notice in relation to the known proceeds would be a satisfactory arrangement.

Wholly discharged

A debt is wholly discharged when no part of it remains owing. A child support can be wholly discharged either by payment or an administrative or judicial process that decreases the amount of the debt. Where either or both of these processes result in no part of the debt remaining payable, the debt is wholly discharged. A debt treated as uneconomic to pursue is not wholly discharged.

Version 1.3

< Previous Next >

2.4.5: The payee's income is higher than the disregarded amount

Context

If a payee's income is higher than a certain amount it can reduce the child support assessment.

Legislative References

Subdivision D of Division 2 of Part 5, sections 43, 44,45, 45A and 46 *Child Support (Assessment) Act 1989*

Explanation

The payee's income can affect the amount of child support payable if:

- the payee is a parent of the child; and
- the payer is not an eligible carer of any children of the assessment (section 43) (i.e., the payee has sole care). (See chapter 2.2).

A payee's child support income amount is based on their taxable income and supplementary amounts for the last relevant year of income.

If a payee's child support income exceeds the disregarded income amount the payer's adjusted income is reduced by 50% of the excess (section 44(1)). However, the annual rate of child support cannot be less than 25% of the annual rate that would be payable if the payee's income was less than the disregarded income amount (section 44(2)).

Example

M is paying child support to F who has sole care of their child, A. M has a taxable income for the relevant year of $20,000 and no supplementary amount. M has no relevant dependants so the exempted income amount is $13,983. F has a child support income amount of $48,000. The disregarded amount is $41,881. The child support percentage for one child is 18%. The annual rate of child support (for a child support period commencing 1 January 2006) is calculated:

F's income in excess of disregarded	= $48,000 - $41,881 = $6,119
50 % of excess	= $3,060
Reduced adjusted income amount	= $20,000 - $13,983 - $3,060 = $2,957
Annual rate of child support	= $2,957 ´ 18% = $532

(The annual rate is rounded up or down to the nearest whole dollar (section 156)).

Minimum child support	= ($20,000 - $13,983) x 18% x 0.25 = $271

(The annual rate is rounded up or down to the nearest whole dollar (section 156)).

The reduced amount is more than the minimum amount. M has to pay F the reduced amount of $532.

Issued 28 July 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.1.5: Payment periods and payment of child support debts

Context

This topic covers payment periods and due dates for payment. It applies to periodic enforceable maintenance liabilities.

Legislative References

Sections 26A, 26B, 26C, 29, 66 *Child Support (Registration and Collection) Act 1988*

Regulation 5 *Child Support (Registration and Collection) Regulations 1988*

Explanation

When CSA registers a periodic maintenance liability, it must calculate a daily rate payable under that maintenance liability. Depending on the payment period, it must also calculate a weekly, fortnightly, 4-weekly or monthly rate. The child support debt will be due and payable at particular periods depending on the payment period. This section outlines the following:

Initial payment period

Calculating payment rates

Payment periods for voluntary payers

Payment periods if child support debt is deducted from salary or wages

Due dates for payment

Initial payment period

When CSA registers a maintenance liability for collection it must also enter an initial payment period, if there is one. The initial payment period starts on the day the liability becomes payable to CSA and ends the day before the start of the first regular payment period (section 26C).

CSA will calculate the amount owing for this period by multiplying the daily rate by the number of days in the initial period. It will notify the payer of the amount owing.

Calculating payment rates

After the initial period amounts are payable to the Commonwealth at the payment rate entered in the register. The payment rate will depend on the payment period determined by CSA and can be weekly, fortnightly, 4-weekly or monthly.

The payment rate is calculated by multiplying the daily rate by the following number of days (section 29 and Regulation 5).The daily rate can be calculated by dividing the period of the liability by the number of days in that period.

Period	*Number of days in the period*
Weekly	7
Fortnightly	14
4 weeks	28
Month	30.4375
Year	365.25

A daily rate is rounded up to 5 decimal places by reference to the value of the 6th decimal place.

Payment periods for voluntary payers

A payer can elect to pay CSA directly rather than having their child support debt deducted from their wages. If so, they will have a periodic child support debt for a particular payment period. A payer may make an election to make it a different period. CSA will accept elections for payment periods to be either weekly, fortnightly, monthly or 4-weekly if it is satisfied this will be convenient for the payer (section 26B). Where CSA is not satisfied that the elected payment period would be convenient for the payer it will determine the payment period (section 26B(5)).

Payment periods if child support debt is deducted from salary or wages

If CSA uses employer withholdings to collect the child support debt the payment cycle will be the same as the payer's pay cycle. (See chapter 5.2 Administrative enforcement, topic Collection from salary and wages (employer withholding)). It can be a week, fortnight, 4 weeks or month. The first day of the first payment cycle will be determined by CSA and will be the start of the first payment period for which employer deductions will occur (section 26A).

Due dates for payment

A child support debt for days in the initial period are due and payable to CSA on the 7th day of the month following that day (section 66(1)). However, if a liability starts, or is varied, after the 20th day of a month CSA will show the liability as being due and payable on the 7th day of the month after the following month. This takes into account the need to notify the payer of the new or varied liability.

A child support debt for a payment period that is made by a voluntary payer is due and payable to CSA on the 7th day after the last day of the payment period (section 66(2)).

Information about the due dates for payment by employers who have deducted a child support debt from an employee's wage or salary is contained in the topic 'Collection from salary or wages (employer withholding)'. (See chapter 5.2 Administrative enforcement) The payer is discharged from their liability to make payments directly to CSA to the extent of the amounts that the employer has deducted from their wages or salary (section 49(a)). The payer is required to pay any shortfall to CSA and this is due on the 7th day after the last day of the payment period (section 66(2)).

Examples

If the initial period covers the last 3 days of June and the first 3 days of July, the payer must make a payment to CSA by 7 August.

If the Register states that the payer must pay $500 for each monthly pay period then they must make this payment by 7th of each month.

If the Register states that the payer must pay $250 each fortnight and a fortnightly period ends on the 15 June, then they must make the payment to CSA by 22 June.

Version 1.6

< Previous Next >

2.9.1: When child support is due and payable

Context

A child support assessment creates a liability owed by a liable parent to a payee. The Assessment Act sets out when a liability is due and payable.

Legislative references

Section 77 and 78 *Child Support (Assessment) Act 1989*

Sections 24A and 30 *Child Support (Registration and Collection) Act 1988*

Explanation

Once CSA makes an assessment and produces a notice of assessment, the daily rate of child support specified for the child support period becomes an amount the payer is liable to pay to the payee (section 77).

Child support payable in relation to any day in a month becomes due and payable on:

- the 7th day of the following month, or
- the 30th day after the liable parent concerned was given a notice of assessment,

whichever is the later. (section 78).

When CSA makes a child support assessment, it must register the liability for collection unless:

- the payee has elected not to have the liability registered under the Registration and Collection Act, or
- the payer applied for the child support assessment (section 24A Registration and Collection Act).

If CSA registers the liability for collection, the child support becomes a debt due to the Commonwealth. It is payable at the payment rate specified in the Child Support Register for the payment period (section 30 Registration and Collection Act) (See chapter 5.1 CSA Collection) and is not due to the payee under section 78.

Version 1.0

Issued 1 October 2002

< Previous Next >

2.2.2: Eligible applicant - carer applications

Context

A person who is an eligible carer can apply for a child support assessment from a parent of a child.

Legislative References

Sections 5, 7B, 25, 26 and 26A *Child Support (Assessment) Act 1989*

Explanation

A person can apply to CSA for a child support assessment for a child if they are:

- an eligible carer, and
- seeking child support from a person who is:
  - a parent of the child, and
  - a resident of Australia (or habitually resident in a reciprocating jurisdiction (See chapter 1.5) on the day the application is made, and
- not living on a genuine domestic basis with the person from whom they seek child support.

An eligible carer will generally not be sharing a residence with the person from whom they seek child support. However, if parents are legally separated, but still reside together in the home they shared, they are not considered to be living together on a genuine domestic basis. Whether parents are separated, or are still living together on a genuine domestic basis, is a matter of fact and degree in each case. However, separation usually involves 3 elements:

- intention to end the relationship;
- action upon that intention; and
- communication of the intention to the other party.

A person who is caring for a child who is in their care under a child welfare law cannot apply for child support unless they are the child's parent or relative (section 26A). Also see eligible child.

Example

> G has care of a grandchild, A, under a child welfare law applying in Victoria. G can apply for an assessment of child support from either or both of A's parents.

If 2 or more people care for the child together in a residence that they share (i.e. jointly), only one of the joint carers can apply. If one of the joint carers is a parent of a child, they can apply for a child support assessment, or another joint carer can apply on their behalf (section 26). If a joint carer makes an application on behalf of a parent CSA will confirm the parent consents to them making the application. The payee will be the parent, not their partner.

Example

> A, a child of M and F, is in the joint care of M and Z. M can apply for a child support assessment, or Z can apply on M's behalf.

Eligible carer

An eligible carer is a person who (section 7B):

- is the sole or principal provider of ongoing daily care of a child, or

has major contact with a child, or
- shares ongoing daily care of a child, or
- has substantial contact with a child.

Example

M has 2 children A and B. A lives with M all the time. B stays with M 2 nights a week. M is an eligible carer of A, as M provides sole care. M is not an eligible carer of B as M has less than substantial contact with B.

An application from a non-parent carer

A person is not an eligible carer if:

- they are not a parent or legal guardian of a child (a non-parent), and
- the child's parent or legal guardian has said that they do not consent to the person providing or sharing care of the child, or having contact.

However, the person will be an eligible carer if it would be unreasonable for a parent or legal guardian of the child to provide or share that care or to have that contact (section 7B(2)).

It is unreasonable for a parent or guardian to provide or share that care or have contact if CSA is satisfied that:

- there has been extreme family breakdown, or
- there is a serious risk to the child's physical or mental wellbeing from violence or sexual abuse in the home of the parent or legal guardian concerned (section 7B(3)).

CSA will be satisfied that a carer meets the definition of an eligible carer once they establish that they provide care for the child unless a parent or legal guardian raises an issue with the care arrangements.

Where the child was previously subject to another child support assessment in favour of a parent, CSA will contact that parent to confirm the change in care. If the parent says that they do not consent to the applicant providing care for the child CSA will investigate to establish whether the applicant is eligible to apply for an assessment.

The terms of the legislation imply that if the parent does not agree to the care arrangements they must be prepared to provide care for the child. Some reasonable indication of an alternative living arrangement for the child is required.

CSA will be satisfied that there has been an extreme family breakdown if:

- the child has never lived with the parent, or
- there has been a substantial period since the parent has provided care for the child.

However, CSA will not be satisfied that there has been an extreme family breakdown if the parent had frequent and regular contact over a substantial part of the period when another person provided care for the child.

If a court has ordered that the child reside with the non-parent carer CSA will not look beyond the order. If a court order says that the child will reside with one of its parents and that parent tells CSA they do not consent to the child living with the non-parent carer, CSA will presume that the non-parent carer is not an eligible carer unless they can provide evidence about the risk to the child if returned to the parent's home.

Version 1.3

Issued 18 August 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.2.1: Eligible child

Context

CSA can only make a child support assessment for a child who is an eligible child (section 18) and a child for whom an application can be made (section 24).

Legislative References

Sections 5, 18, 19, 20, 21, 22, and 24 *Child Support (Assessment) Act 1989*

Regulation 4 *Child Support (Assessment) Regulations 1989*

Explanation

An eligible child must:

- be born on or after 1 October 1989 (the commencing day of the Assessment Act) (section 19), or
- have parents who lived together and who separated on or after 1 October 1989 (section 20), or
- have a brother or sister who was born to the same parents on or after 1 October 1989 (section 21), and
- not be cared for under a child welfare law of Queensland, South Australia, Western Australia, Norfolk Island, Christmas Island, or the Cocos (Keeling) Islands (section 22 and regulation 4).

Example

M has 2 children, A born 1 July 1987 and B born 1 July 1990. B was born after 1 October 1989 and is an eligible child. If A and B have the same parents, A is also an eligible child.

Example

A was born to M and F on 1 July 1988. M and F separated on 1 August 1988. A is not an eligible child.

If M and F reconciled and then separated again on 1 December 1989, A is an eligible child.

A person can only apply for a child support assessment for an eligible child if the child is under 18 years of age (section 24(a)(ii)). A person cannot apply for a child support assessment for a child who is a member of a couple (i.e. living with a person of the opposite sex on a genuine domestic basis or with someone they are legally married to) (sections 5 and 24(a)(iii)).

The child must also meet the residence requirements for a child support assessment, which are:

- the child is in Australia when the person makes the application (section 24(b)); and/or
- the child is an Australian citizen, or ordinarily resident in Australia on that day.

If the child does not meet the ordinary residence requirements, a liable parent or eligible carer in a reciprocating jurisdiction may still be able to apply for a child support assessment for that child (See chapter 1.6 Overseas cases topic Australian child support assessments for overseas cases).

Version 1.3

Issued 23 January 2008

< Previous Next >

5.2.3: Collection from salary or wages

Context

As far as is practicable, CSA is required to collect registered maintenance liabilities by deduction from the salary or wages of a payer (known as employer withholding). The Registration and Collection Act sets out an employer's obligation to withhold money from salary and wages and to send it to CSA.

Legislative References

Sections 43 to 65AA Part IV *Child Support (Registration and Collection) Act 1988*

Regulation 3 *Child Support (Registration and Collection) Regulations 1988*

Explanation

When employer withholding can apply

Employer withholding can apply when the payer is an employee who receives salary or wages. This has a broad meaning under the Act and means:

- Payments to employees
- Payments to company directors
- Payments to office holders
- Return to work payments
- Payments under labour hire arrangements
- Payments of pensions and annuities
- Eligible termination payments
- Payments for unused leave
- Benefit payments
- Compensation payments
- Alienated personal services payments
- Payments to independent contractors

Starting employer withholding

CSA sends a written notice to the payer's employer when it decides to collect a registered maintenance liability through employer withholding (section 45(1)). The notice will:

- specify the name of the payer,
- include sufficient particulars to enable the employer to identify the payer,
- instruct the employer to:
    a. make periodic deductions from salary and wages paid to the payer, from a specified day in accordance with the specified weekly deduction rate, and
    b. pay CSA the amounts deducted each month by the 7th day of the following month and to give CSA notice of the amounts deducted (section 47(1)).

CSA must immediately give a copy of the notice to the payer (section 45(3)).

Collecting arrears through employer withholding

If CSA is already collecting an ongoing liability from a payer's salary and wages, it can also arrange to collect arrears in the same way (this is known as employer withholding of arrears, or EWA).

CSA can vary a notice served on an employer for the collection of ongoing child support to include an additional amount to cover amounts overdue (section 45(2A)). A copy of the notice to increase the deduction must be served on the employer. CSA will also send the payer a copy of the notice.

As in all payment arrangements, CSA should act reasonably when collecting a debt in this fashion and will provide a payer with the opportunity to respond before additional deductions are commenced. An opportunity to negotiate allows the payer to present CSA with any relevant facts for consideration. The protected earnings amount still applies in these cases.

An arrangement to collect arrears by employer withholding will not prevent CSA from using other administrative action or legal action to recover the debt. CSA will make this clear to a payer when it negotiates any recovery arrangement.

Example

> CSA is collecting F's arrears of child support by additional salary deductions. CSA becomes aware that F is about to sell a property in which they have a significant equity. CSA would seek to satisfy the debt in full by reaching an agreement with F to pay their arrears at the time of settlement, or by issuing a section 72A notice. It is important to make clear to F that CSA will seek to satisfy the debt in the most efficient and timely way possible. If an additional amount becomes available, CSA will seek to apply it to the debt.

Obligations of an employer

An amount payable to CSA under Part IV of the Registration and Collection Act is a debt to the Commonwealth (section 64).

Part IV sets out an employer's obligations where an employer is required to make deductions and pay them to CSA. The part also provides for various penalties and offences where those obligations are not met.

Protected earnings

Penalties

Remission of penalties

Not to prejudice employees

Not to disclose information

Record keeping

To allow access

Protected earnings

Employers should not deduct the full specified periodic deduction from a payer's salary or wages if that would leave the employee with less than the 'protected earnings amount'.

The protected earnings rate is defined as the amount prescribed by regulation (section 4(1)). The weekly rate is prescribed as 75% of the maximum fortnightly basic rate of Newstart Allowance payable on 1 January each year, to a person who is over 21 and partnered, and has no dependent children (regulation 3).

The amount of salary and wages is the amount payable after the deduction of income tax deductions (section 46(8)).

Example

> In March 2003 F earns $400 a week and pays tax of $118.00 a week. F's employer is required to deduct child support of $50 a week.
>
> F is paid after-tax wages of $282 a week. The protected earnings rate at 1 January 2003 is $253.58.

To deduct $50 in child support would leave F with less than the protected earnings rate. For that week F's employer can only deduct $28.42 ($282 less $253.58).

Penalties

The Registration and Collection Act imposes penalties on employers for:

- Failing to pay amounts deducted to CSA
- Failing to deduct from an employee's salary or wages
- Unexplained remittances.

Failing to pay amounts deducted to CSA

Where an employer (apart from the Commonwealth) owes CSA an amount under section 47 and the amount is not paid by the due date, the employer is liable to pay a penalty in addition to the amount owed (section 51). The penalty applied is:

- where the employer is a government body, 20% per annum on the amount that is unpaid.
- in any other case:
    a. 20% of the amount, and
    b. 20% per annum of the original amount and penalty that remains unpaid.

Failing to deduct from an employee's salary or wages

Where an employer (apart from the Commonwealth) fails to make deductions from the salary of wages of employees as provided in section 46(1) the employer is liable to pay a penalty of 20% per annum of the amount that should have been paid. For an employer other than a government body the employer is also liable to pay an amount equal to the undeducted amount (section 52).

Unexplained remittances

When an employer remits deductions to CSA, they must notify CSA of the details of the deductions. If the employer remits less than the total expected amount to CSA and they are required to deduct amounts for more than one payer, CSA will transfer an amount from consolidated revenue to 'top up' the shortfall (section 78(3)(d)). The employer is liable to pay a penalty of an amount equal to the 'top up' amount (section 53).

Remission of penalties

CSA can remit penalties imposed for late payment, failure to make deductions and failure to explain a shortfall in remittances (section 54). Remission of penalties involves consideration of:

- the circumstances that led to the employer's delay in payment, failure to make the deduction, or failure to explain the reasons for a short remittance, and
- the employer's action to mitigate, or mitigate the effects of, those circumstances, and
- special circumstances in which it would be fair and reasonable to remit the penalty.

Where penalties are remitted in whole, or in part, or CSA decides not to remit a penalty, CSA must give notice to the employer.

Circumstances that led to the delay or failure

- Circumstances beyond the control of the employer
- Circumstances that were within the control of the employer

Circumstances beyond the control of the employer

The employer must demonstrate that they could not make adequate provision to deduct a periodic amount or to remit the amount to CSA by the due date because of unpredictable factors beyond their control.

Examples

Sudden ill health of key personnel in a small business.

Strikes

Unforeseen collapse of a major debtor.

Disruption caused by natural disasters such as bushfires, floods, droughts or hailstorms.

Exceptional circumstances which lead to a temporary reduction in the employer's cash flow.

'Adverse business conditions affecting the industry', 'general economic downturn', or 'fluctuation of currency rates' will not be sufficient unless the employer can show a more specific event or effect on cash flow.

An employer must also demonstrate that they have taken reasonable steps to mitigate the circumstances that contributed to the failure to deduct or the late payment.

Examples

A budget reorganisation to counteract the reduction in cash flow.

Attempts to raise additional funds from financial institutions.

Application for government assistance for disaster relief.

Action by the employer to protect their position where money is owed to them.

It will not be sufficient for an employer to claim that they did not understand the requirement to deduct. Employers are routinely required to make certain deductions from the salary and wages of their employees. However, CSA will give the benefit of the doubt to an employer who claims not to have understood their obligation to notify CSA of a variation to an expected deduction on the first occasion and will remit the penalty.

Circumstances that were within the control of the employer

The employer must demonstrate that they could not make adequate provision to deduct a periodic amount or to remit the amount to CSA by the due date because of exceptional circumstances within their control.

Examples

A bad business decision (although reasonable at the time it was made) resulted in a direct financial loss or adverse and unforeseen consequences.

An employer's payment history may also be considered as an indication of the degree of control that the employer has over events and attempts made to plan around these events.

If CSA is satisfied that the circumstances were exceptional, and the employer demonstrates that reasonable steps have been taken to mitigate the effects of those circumstances, CSA will remit the penalty in full.

Steps taken to mitigate the effects

Example

Where the inability to pay is caused by the collapse of a major debtor, the penalties may be remitted where the employer can demonstrate that necessary action has been taken to secure the debt.

Special circumstances in which it would be fair and reasonable to remit the penalty

CSA may be satisfied that there are special circumstances so that it would be fair and reasonable to remit the penalty. This would normally be limited to cases of serious financial hardship or where the employer is deceased.

Not to prejudice employees

It is an offence (section 57) for an employer to:

- refuse to pay or employ a person
- dismiss, or threaten to dismiss, a person
- terminate, or threaten to terminate, a person's employment
- prejudice, or threaten to prejudice, a person in their employment, or to
- intimidate, coerce or penalise, a person

because the person is:

- the payer of a registrable maintenance liability (includes liabilities which **could** be registered under the

Registration and Collection Act, not just those registered), or
- an employee in relation to whom a notice has been given to an employer under section 45(1).

An offence under section 57 is treated very seriously as customers and potential customers may be subject to prejudice. Allegations of prejudice, etc. will be investigated as a matter of high priority.

In a prosecution for an offence under section 57 it is not necessary to prove that the reason for the employer's action was related to the person's child support. However, it is a statutory defence if the employer can prove on the balance of probabilities that the action was not motivated by any of the reasons listed above, either wholly or in part.

Where an employer is convicted of an offence under section 57 the court can, in addition to imposing a fine (not exceeding $2000):

- order compensation to the employee for loss or damage, and
- order action be taken to reduce or remedy the loss suffered.

When considering a prosecution under this section, care should be taken to ensure that the outcome will produce maximum benefit. Where there is a chance that an alternative, softer, approach to the employer would more than likely gain voluntary compliance it can be used instead of prosecution which may not produce the same result. The needs of the employee and the likelihood of an order for compensation need to be considered.

Situations which would warrant investigation include those where an employer:

- threatens to sack employees because of the need to deduct child support.
- charges employees an amount to cover the employers costs of deducting child support.
- indicates that, in the future, they will not employ any person who has a child support liability.
- denies an employee developmental opportunities because of their child support liability.

Not to disclose information

An employer (or their employee or contractor) has a duty not to disclose (either directly or indirectly) any information obtained in accordance with the employer's duties under Part IV unless the information is divulged for the purposes of complying with their obligations to deduct and remit those deductions to CSA or in connection with carrying on the employer's affairs (section 58).

A maximum penalty of $1000 applies to any breach of this duty. These offences are treated seriously as they involve the privacy of child support customers.

Record keeping

An employer is obliged to keep records that explain all amounts deducted, or required to be deducted, under section 46 as well as any other acts required under Part IV (section 59). The employer must keep these records for 5 years unless CSA advises the employer otherwise, or the employer is a company which has gone into liquidation and has been dissolved. The records must be either:

- written in English, or
- readily convertible into English.

There is a maximum penalty of $2000 for failing to keep and retain the required records (section 59(4)).

Where an employer keeps records in such a way that they do not explain the matters to which they relate the employer is guilty of an offence (section 60). A maximum penalty of $2000 applies.

To allow access

An employer is obliged to provide authorised CSA officers with free access to premises and documents at reasonable times so that the officer can inspect, examine, make copies of, or take extracts of, any document (section 61). The occupier of the premises must provide the officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing.

CSA officer must produce an authority in writing, if requested, stating that they are authorised to exercise powers under section 61. (See chapter 6.2 Collecting information)

An employer who refuses access or does not provide reasonable facilities or assistance is guilty of an offence. (See chapter 6.8 Offences and Prosecution)

Public officer service on a company or trust

An employer which is a company or trust is required by the *Income Tax Assessment Act 1936* to have a public officer for the purposes of that Act. A public officer for tax purposes is also a public officer for the purposes of the Registration and Collection Act (sections 62 and 63). Service on the public officer at the address for service is sufficient service on the company or trust for the purposes of the Registration and Collection Act. Proceedings against the public officer are deemed to be proceedings against the company or trust.

WA ex-nuptial cases

The information in this chapter applies to WA ex-nuptial children. See Chapter 1.4 Western Australia and the child support scheme for details of the date from which various provisions had effect.

Version 1.4

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.2.2: Payer election to pay CSA directly

Context

CSA is required to collect registered maintenance liabilities by deductions from the payer's wage or salary if it is practicable to do so. However, CSA can accept a payer's election to make payments directly to CSA if it is satisfied the payments will be made on time.

Legislative References

Sections 43 and 44 *Child Support (Registration and Collection) Act 1988*

Explanation

A payer can elect to make payments directly to CSA. If CSA is satisfied that timely payments will be made it can vary the particulars of the Child Support Register to include a statement that employer withholding doesn't apply. CSA can revoke the payer's election if the payer does not make their payments on time.

Making an election

While, as far as practicable, CSA is required to collect child support payments from a payer's salary or wages (section 43(1)) this does not apply where the Child Support Register entry contains a statement that employer withholding does not apply (section 43(2)). If:

- a payer elects that employer withholding should not apply, and
- CSA is satisfied that a payer who makes an election is likely to make timely payments,

CSA must accept the election.

For existing payers CSA does this by varying the register to contain a statement that employer withholding does not apply (section 44(1)). For new cases, CSA includes the statement in the register at the time the liability is registered (section 44(2)).

If CSA accepts the payer's election, the payer should make payments directly to CSA rather than payments being deducted from the payer's salary or wages.

If CSA refuses a payer's election, the payer may not make a further election for another 2 months (section 44(7C)).

If CSA revoked an earlier election because the payer did not pay on time, the payer cannot make another election for 6 months.

Payer likely to make timely payments

To determine whether a payer is likely to make timely payments, payers can be divided into 4 groups:

- First election by new payers before any payments due
- First election by payers, other than new payers, who do not have arrears
- First election by payers, other than new payers, who have arrears
- Subsequent election where previous election revoked because the payer did not make timely payments

First election by new payers before any payments due

Includes payers who:

- are a customer of CSA for the first time; and
- are not yet due to make the first payment; and
- have not previously made an election.

Whenever possible CSA discusses payment options with a prospective payer before registration. If a payer elects for withholding not to apply the election will often be made before any payment is due. There is no payment pattern which might help indicate whether the payer is likely to make timely payments.

In the absence of a payment pattern, CSA will determine whether the payer is likely to make timely payments on the basis of the preliminary discussions or correspondence with the payer. CSA will be satisfied that the payer is likely to make timely payments, except where the payer has expressly indicated an intention to avoid paying as required.

A payer may claim that they cannot make the entire first payment on time because it includes amounts for a period prior to them knowing of the liability (known as 'start-up arrears'). CSA will be satisfied that the payer is likely to make timely payments even if it is unlikely that all the first payment will be paid on time, provided that the payer:

- did not expressly indicate an intention to avoid paying as required; and
- made a reasonable proposal for paying off the start-up arrears which CSA has accepted; and
- undertook to pay the normal monthly amount (that is, the monthly amount after excluding start-up arrears) when it falls due.

When there are no start-up arrears or minimal amounts owed, the payer may still claim that he or she will not be able to make all the first payment on time because notice from CSA did not allow sufficient time for the arrangement of their financial affairs. CSA will be satisfied that a payer who makes this claim is likely to make timely payments even if it is unlikely that all the first payment will be paid on time, provided that the payer:

- had less than 21 days notice of the first payment; and
- did not expressly indicate an intention to avoid paying as required; and
- undertook to make the first payment as soon as possible after the due date, but no later than the due date for the second payment.

First election by payers, other than new payers, who do not have arrears

Includes payers, whether or not already linked to employer withholding, who:

- have not previously made an election; and
- were due to start making payments by a date which has already passed, either for this liability or for any other current or previous liability; and
- do not have any arrears.

CSA will be satisfied that a payer who does not have arrears is likely to make timely payments, unless the payer has expressly indicated an intention to avoid paying as required.

Examples

CSA will not be satisfied that payments are likely to be timely if:

- The payer has expressly indicated an intention not to pay and subsequent events do not indicate that this intention has changed.

- There have never been arrears only because employer withholding commenced from the outset.
- CSA has collected arrears through either employer withholding, a tax refund intercept, or from a third party.

If a payer who pays more than one payee makes an election, that election will apply to all the liabilities, unless the payer specifies otherwise. Where a payer makes an election which does not apply to all their liabilities, CSA will still consider whether the payer is likely to make timely payments for all their liabilities. Thus, CSA will take into account the payer's payment pattern in relation to all their existing liabilities when deciding whether the payer is likely to make timely payments for a new liability, in which the first payment is not yet due.

CSA will normally take into account the payer's payment pattern in relation to any previous liability, whether or not the payee of that liability is the payee of the current liability. The extent to which this will be a factor in determining whether the payer is likely to make timely payments will depend on:

- how long ago the previous liability ceased
- the reasons for any arrears which may have arisen in relation to the previous liability
- whether the reasons for any arrears in relation to the previous liability indicate that the payer may again not make timely payments
- any circumstances in relation to the previous liability which distinguish it from the current liability.

First election by payers, other than new payers, who have arrears

Includes payers, whether or not already linked to employer withholding, who:

- have not previously made an election; and
- were due to start making payments by a date which has already occurred, either for this liability or any other current or previous liability; and
- have arrears.

CSA will be satisfied that a payer who has arrears is nevertheless likely to make timely payments, if the payer:

- made a reasonable proposal for paying off the arrears and the payer is keeping to the arrangement agreed by CSA; and
- is paying the normal monthly amount (that is, the monthly amount after excluding arrears) when each falls due.

Subsequent election where previous election revoked because payer did not make timely payments

Includes payers who:

- previously made an election but did not make timely payments; and
- had the election revoked because CSA was not satisfied that timely payments were likely to resume in the near future; and
- made another election, after waiting the required 6 months.

If a payer again elects for employer withholding not to apply, CSA will not give effect to the payer's subsequent election unless the payer can demonstrate that the circumstances that led to the previous election being revoked no longer exist.

In considering a subsequent election, CSA will require more substantial indicators that payments will be timely than were required when deciding whether to allow the previous election. The kinds of more substantial indicators include:

- the payer offers to be permanently in advance by at least one month's payment
- the monthly liability has reduced because of a court order or change of assessment decision made after CSA resumed collection, and CSA is satisfied that payer had in fact been making a genuine effort to pay, and that they will be likely to make the new monthly payments in full and on time.

Determining whether to revoke an election where a payer does not make timely payments

If a payer does not make timely payments, CSA will revoke the election unless it is satisfied that:

- the payer is likely to resume making timely payments in the near future, or
- employer withholding is not an efficient method of collection.

In considering whether the payer is likely to resume making timely payments, CSA will first determine whether one of the following special circumstances caused the payer not to pay on time:

- the circumstances causing the failure to make timely payments were beyond the payer's control; and
  - the circumstances existed for the one month only; or
  - if the circumstances will continue beyond the one month, the payer has taken reasonable action to minimise their effect in the future
- the payer advised that an unexpected temporary drop in income or an urgent and necessary expense caused the late payment, but for the one month only
- the amount payable for a particular month is abnormally high because it includes additional amounts for previous months caused by a retrospective variation to the liability, and the payer cannot afford to pay the additional amount by the due date.

If any of these special circumstances apply, CSA will then require the payer to have:

- made a reasonable proposal for paying off the arrears which CSA has accepted; and
- undertaken to pay the normal monthly amount (that is, the monthly amount after excluding arrears) when each falls due; and
- established a payment pattern which indicates that, under normal circumstances, he or she makes timely payments,

before being satisfied that the payer is likely to resume making timely payments in the near future.

CSA will revoke the election if it is not satisfied that the payer is likely to resume making timely payments in the near future.

Determining whether to revoke an election where the payer has not kept to an arrangement to pay off arrears

Where a payer does not keep to an arrangement to pay off arrears, CSA will consider whether to revoke their election. CSA will use the same tests that apply when it considers whether to revoke an election where a payer does not make timely payments (see above).

The payer's failure to keep to the payment arrangement indicates that the special circumstances that led to the arrears in the first place will continue to have an effect. CSA will require the payer to demonstrate that this is not the case.

Subsequent election where CSA rejected the previous election

CSA will consider subsequent elections by payers whose previous election was rejected using the same tests that apply to first elections.

Payers who make an election but subsequently do not make timely payments

If a payer does not make timely payments, CSA must vary the Register entry so that employer withholding applies (section 44(5)) **unless** it is satisfied that:

- deduction from salary or wages would not be an efficient method of collection, or
- the payer is likely to resume making timely payments in the near future (section 44(5A)).

If CSA revokes a payer's election because they did not make timely payments, that payer cannot make another election for 6 months from the date the election is revoked (section 44(7B)).

If no election made

If a payer who is an employee does not make an election, CSA will collect the payments by employer withholding, unless this would not be an efficient method of collection.

Version 1.1

Issued 18 August 2003

< Previous Next >

5.6.1: Election to end collection

Context

A payee, or the payee and payer jointly, may elect for CSA to end collection of the liability. They may also elect for CSA not to collect any arrears of child support.

Legislative References

Sections 38 and 38A *Child Support (Registration and Collection) Act 1988*

Explanation

If CSA has registered a liability for collection, the payee can make an election that CSA end collection. The payee can also make that election jointly with the payer.

Making an election

CSA ends collection from a specified terminating day

Effect of an election to end collection

Election for CSA to end collection of arrears

CSA to vary register after an election to end collection of arrears

Making an election

- A payee can make an election that CSA end collection of child support.
- The payee and payer can make a joint election that CSA end collection.
- A payer cannot make an election that CSA cease collecting child support for the payee.

An election to end collection can be made in writing or on a CSA form. CSA will also accept elections made over the telephone, unless there are specific circumstances in the case that suggest the customer should make the election in writing (See chapter 6.2 Collecting information, heading Form of applications). In such cases, CSA will require the person to make their election in writing and the telephone election is not valid.

The election must specifically indicate that the payee (or the payer and payee jointly) choose for CSA to stop collecting child support. The election may specify a date from which CSA should cease to collect the child support, but this is not a requirement. The payee (or the payer and payee jointly) making the election can also elect for CSA not to collect any arrears of child support.

CSA ends collection from a specified terminating day

CSA must accept an election to end collection. CSA will vary the particulars in the Child Support Register (the Register) to show that the liability ceased to be enforceable from a specified terminating day.

Specifying a terminating day

CSA must specify a terminating day that is no more than 60 days after it received the election. The terminating day cannot be a day in a low income non-enforcement period.

- If the election nominated a date for CSA to end collection, CSA will use that date.
- If the election did not nominate a date for CSA to end collection, CSA will use the date that it received the election as the terminating date.
- If the election nominates a day in a current low income non-enforcement period, CSA will specify a terminating day that is the day immediately before the start of that low income non-enforcement

period.
- If the election nominates a day in an expired low income non-enforcement period, CSA will specify a terminating day that is the day immediately after the end of that low income non-enforcement period.

CSA will check whether the proposed terminating day would result in any overpayment to the payee. If so, CSA will contact the payee to discuss using a different terminating day.

Effect of an election to end collection

An election to end collection does not end the payer's liability to pay child support. Any amounts due under the court order or administrative assessment continue to be payable to the payee rather than the Commonwealth. The payee can enforce payment of the liability privately.

Election for CSA to end collection of arrears

When a payee (or payer and payee jointly) elects for CSA to end collection of child support, they can also elect for CSA not to collect any unpaid amounts (arrears). A payee (or payer and payee jointly) cannot elect to have CSA continue collecting ongoing amounts of child support but stop collecting arrears.

If the payee is currently in receipt of Centrelink payments, CSA will emphasise the importance of contacting Centrelink to ensure the payee understands the implications of their decision to end collection of arrears.

When the payee is in receipt of more than the minimum Family Tax Benefit (FTB), they are required to meet the Reasonable Maintenance Action test under the Centrelink legislation. As a general rule, Centrelink will calculate the FTB entitlement on the assumption that the payee has received all privately collectable child support. This includes any amounts that were unpaid when the payee elected for CSA to end collection under the Registration and Collection Act.

CSA to vary register after an election to end collection of arrears

CSA will vary the register to show that any arrears the payee (or the payer and payee jointly) have elected not to have CSA collect are no longer due to CSA.

Effect of election for CSA to end collection of arrears

If the payee (or payer and payee jointly) elect for CSA to end collection of arrears, those arrears are still payable to the payee rather than the Commonwealth. The payee can enforce payment of the arrears privately.

The payee may apply for a liability (in some circumstances including arrears), to become enforceable again after they have opted out. See reapplying for CSA collection.

Ending a liability

If a child support assessment or a court-ordered liability ends because of a terminating event, but there are unpaid amounts for the period before the terminating event, CSA is still required to collect those arrears. The arrears are an 'enforceable maintenance liability' and a debt due to the Commonwealth (section 30).

CSA can 'discharge' arrears on an ended case if the payee (or payer and payee jointly) make an election for CSA to end collection of arrears.

Changes to the liability after an election to end collection

CSA may vary a child support liability after that liability has ended or ceased to be enforced. This commonly occurs in child support assessment cases where a parent lodges their tax return and CSA is advised of the taxable income and uses this information to reconcile the parent's estimate election, or to replace a default income.

If CSA varies a liability for the days before the specified terminating day, this can result in further unpaid amounts for the days before the specified terminating day. Child support arrears for a past period of CSA collection will be payable to CSA. However, the payee (or payer and payee jointly) can elect for CSA not to collect any arrears arising from subsequent changes to the liability. CSA will explain to the payee the possible consequences of an election to end collection of amounts payable under a child support assessment based on a default income or estimate.

Example

M and F, a payer and payee, jointly elect for CSA to end collection of child support. At the same time, they elect for CSA not to collect unpaid amounts. M and F's assessment is based upon M's estimate of taxable income. CSA gives effect to M and F's election by specifying a terminating day, which is the date of M and F's election and varies the Child Support Register to show that the overdue amounts are no longer payable to CSA.

Three months later, M lodges his tax return. It shows that M's actual taxable income was higher than his estimated income. CSA reconciles M's estimate and increases M and F's child support assessment. M must pay extra child support to CSA for the days before the specified terminating day. M and F can make their own arrangements for paying the extra child support for the specified terminating day and all subsequent days.

Version 1.1

Issued 28 July 2006

< Previous Next >

5.1.3: Date a liability first becomes enforceable

Context

CSA must work out the day that a liability is first enforceable by CSA when it registers a liability for collection.

Legislative References

Sections 24, 24A, 25, 28, 28A *Child Support (Registration and Collection) Act 1988*

Regulation 15 *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*

Explanation

CSA works out the day that a registered maintenance liability becomes enforceable according to the circumstances in which it registered the liability for collection (section 28). The rules that apply to each type of registration are discussed below.

New child support assessments

Existing child support assessments

Stage 1 court orders made from 1 June 1988 (or Stage 1 agreements registered in a court from that date)

Stage 1 court orders made before 1 June 1988 (or Stage 1 agreements registered in a court before that date)

Child or spouse maintenance liabilities transferred from State or Territory collection agencies

Overseas maintenance liabilities and agency reimbursement liabilities

Parentage overpayment orders

New child support assessments

When CSA makes a new child support assessment (including an assessment made in accordance with a child support agreement) it must register the liability for collection (section 24A(1)) unless:

- the payee elected for CSA not to collect that liability for them when they applied, or
- the payer applied for the child support assessment.

The liability first becomes enforceable by CSA from the start date of the child support assessment (section 28(ba)). (See chapter 2.1 Applying for an assessment)

Existing child support assessments

A payee can apply for collection of a child support assessment if CSA did not register it because:

- the payee elected not to have the liability registered for collection when they applied for a child support assessment; or
- the payer applied for the child support assessment.

CSA must register the liability under section 25(2). CSA must decide the day from which the liability first becomes enforceable by CSA. That day must not be more than 60 days after CSA received the application for collection (section 28(c)).

CSA will decide that the liability is first enforceable from the date it received the payee's application for collection. If the payee made their application by lodging a form at a Centrelink or Family Assistance office,

CSA will accept this as the date that it received the payee's application.

If the payee had previously elected not to have the liability registered for collection when they applied for a child support assessment, or if the assessment was made following a liable parent application, the payee can also apply for CSA to collect arrears for them (section 28A and 28A (1A)).

Stage 1 court orders for periodic maintenance made from 1 June 1988 (or Stage 1 agreements registered in a court from that date)

Payee notified CSA within 14 days of the court making the order or registering the agreement

If the payee notified CSA within 14 days of the court making the order or registering the agreement, CSA must register the liability under section 24(1). The liability first becomes enforceable from the date the liability arose under, or was affected by that particular order or agreement (section 28(b))

Payee notified CSA more than 14 days after the court made the order or registered the agreement

If the payee notified CSA, more than 14 days after the court made the order or registered the agreement CSA can register the liability under section 24(2). CSA must decide the day from which the periodic maintenance liability first becomes enforceable by CSA, which must not be before the date the liability arose under, or was affected by that particular order or agreement (section 28(baa)).

CSA will generally determine that the liability is first enforceable from the date it received the payee's application for collection. If the payee made their application by lodging a form at a Centrelink or Family Assistance office, CSA will accept this as the date that it received the payee's application.

CSA may decide that the liability is first enforceable from a day before it received the payee's application for collection if satisfied that the payee was:

- prevented from notifying CSA within the prescribed 14 day period, and
- they notified CSA of the order or agreement within a reasonable period of it being practicable for them to do so.

Example

M notified CSA of a court order for spousal maintenance on 15 July 2001. The court made the order on 16 June 2001, but M did not receive a sealed copy of the order from the court until 7 July 2001. CSA is satisfied that it was reasonable for M to wait for a copy of the order before notifying CSA that the order was made. It is also satisfied that M applied for collection of the order within a reasonable period of receiving a copy. CSA decides that the liability is first enforceable from the date the liability arose under the order.

There will also be occasions where the payee obtained a copy of the court order in time to lodge their application within 14 days, but could not do so for other reasons. CSA will consider these reasons in deciding whether it would be appropriate to make the liability enforceable from a date earlier than the date the payee applied.

Payee originally elected for CSA not to collect the liability for them

If CSA did not register a court order or court-registered agreement because the payee elected not to have the periodic maintenance liability registered for collection, the payee can make a later application for collection.

CSA must register the liability under section 25(2). CSA must decide the day from which the periodic maintenance liability first becomes enforceable by CSA, which can't be more than 60 days after CSA received the application for collection (section 28(c)).

CSA will decide that the liability is first enforceable from the date it received the payee's application for collection. If the payee made their application by lodging a form at a Centrelink or Family Assistance office, CSA will accept this as the date that it received the payee's application.

The payee can also apply for CSA to collect arrears for them (section 28A).

Payee has never notified CSA of the court order or court-registered agreement

CSA has a discretion to register a periodic maintenance liability arising from a court order or court-registered agreement made on or after 1 June 1988 (or an agreement registered in a court on or after that date) even if

the payee has never notified CSA about the order or agreement (section 24(2)). CSA would do this only in exceptional circumstances.

CSA must decide the day from which the liability first becomes enforceable by CSA, which cannot be before the date the liability arose under, or was affected by that particular order or agreement (section 28(baa)). CSA would decide on a day depending upon the exceptional circumstances that made it appropriate for CSA to register the liability irrespective of the fact that the payee failed to notify CSA of the order or agreement.

The date of effect of a periodic maintenance liability under court order or court-registered agreement

CSA may need to decide the date a periodic maintenance liability arose under or was affected by an order or agreement when it registers a liability for collection.

Some orders and agreements simply specify that an amount is to be paid each week or some other period, without tying the amount to a specific period. The following table sets out how the Registrar will determine the date the liability first becomes enforceable.

Date the order or agreement says the first payment is due	**Date the liability arose under or was affected by an order or agreement**
No date specified	The date of the order or agreement
The order or agreement specifies a date, but does not specify the period the first payment covers (e.g. $x per **week**, first payment due 1 July)	The date the order or agreement says the first payment is due
The order or agreement specifies the period the first payment covers (e.g. $x per week, first payment is for the period from 1 July to 7 July)	The commencement date of the period covered by the first payment

Stage 1 court orders for periodic maintenance made before 1 June 1988 (or Stage 1 agreements registered in a court before that date)

If a payee applies for registration of a court order made before 1 June 1988 (or a stage 1 agreement registered in a court before that date) CSA must register the liability under section 25(2). CSA must decide the day from which the periodic maintenance liability first becomes enforceable by CSA. This must not be more than 60 days after CSA received the application for collection (section 28(c)).

CSA will decide that the liability is first enforceable from the date it received the payee's application for collection. If the payee made their application by lodging a form at a Centrelink or Family Assistance office, CSA will accept this as the date that it received the payee's application.

Child or spouse maintenance liabilities transferred from State or Territory collection agencies

CSA can register a periodic maintenance liability transferred from a state collection agency (See chapter 3.2 What is a stage 1 registrable maintenance liability?, heading Collection agency maintenance liability. The liability is enforceable by CSA from the date the liability is transferred. CSA will negotiate with the other agency about the most appropriate transfer date.

Overseas maintenance liabilities and agency reimbursement liabilities

CSA can register an overseas maintenance liability or an agency reimbursement liability for collection. An overseas maintenance liability is first enforceable on the day on which the liability is registered (regulation 15 *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*). Any amounts that are in arrears under the order are also enforceable under the Registration and Collection Act.

Parentage overpayment orders

A parentage overpayment order is an order requiring repayment of a specified amount, rather than a periodic

maintenance liability (see chapter 3.2.6).

CSA will register for collection any amounts that have yet to be paid by the payer of the order to the payee. If the court has specified in the order a rate at which the overpayment is to be repaid, CSA will register the debt for collection at this rate, ending when the specified amount is repaid in full.

Version 1.5

Issued 1 January 2007

< Previous Next >

2.4.11: Estimates

Context

When a parent's income changes, they may be able to replace their existing child support income amount by giving CSA an estimate of their current income.

Legislative References

Subdivision B of Division 3 of Part 5, sections 59 to 64A, and 160 and 161 *Child Support (Assessment) Act 1989*

Explanation

What is an estimate?

An estimate is an election that a parent can make to have their assessment based on their expected income. A parent can estimate their child support income for a child support period, or the remainder of a child support period by (section 60(5)):

- Step 1 Working out the length of the remaining period.
- Step 2 Estimating the amount that would be the parent's taxable income for the remaining period if that period were a year of income.
- Step 3 Estimating the amount that would be the parent's supplementary amount for the remaining period if that period were a year of income.
- Step 4 Totalling the amounts from steps 2 and 3.
- Step 5 If the remaining period is shorter or longer than 12 months, dividing the amount at step 4 by the number of days in the remaining period and multiplying that figure by 365.

If the remaining period is more than 12 months, a parent can choose to estimate as if the period were 12 months or provide an estimate of their income for the rest of the child support period (section 60(6)).

Remaining period

The remaining period (section 60(5)):

- starts on the day the person makes an estimate or the day the child support period starts, whichever

is later, and
- ends 15 months after the start of the child support period.

Can a parent estimate their income?

A parent can only estimate their income if:

- their first estimate is 85%, or less, than their taxable income and supplementary amount for the child support period (section 60(3)), and
- the child support assessment is not based on an income amount order for any part of the child support period remaining after the estimate is made(section 60(2)), and
- the ATO has assessed their taxable income for the last relevant year of income or the parent has given CSA information about their taxable income.

A parent can make subsequent estimates for a child support period at intervals of 2 months or more. Subsequent estimates can be for more or less than the existing estimate. CSA can review a parent's estimate within 2 months if a parent complies with a notice under section 160.

Income amount orders

An income amount order (section 59) includes a:

- departure order made by a court under Division 4 of Part 7. (see chapter 2.7)
- change of assessment decision under Part 6A. (see chapter 2.6)
- provision of a child support agreement that has been accepted for the purposes of Part 5 as if it was an order by consent under Division 4 of Part 7 (an agreement for periodic payments under section 95(2)).

An agreement that provides for the payment of child support other than in the form of periodic amounts is **not** an income amount order (see chapter 2.5). Those provisions have effect as if they were consent orders made under section 124 (section 95(3)(a)). Section 124 is not part of Division 4 of Part 7.

An order, agreement or change of assessment decision is only an income amount order if it:

- sets the annual rate of the child support payable; or
- sets the child support income amount of a parent or the adjusted income amount of a payer

An income amount order can relate only to the payer or the payee, or to both of them. An income amount order relating to only one parent will not prevent the other parent from making an estimate (section 60(2)).

An order, agreement or change of assessment decision that varies the child support percentage, payer's exempt income amount or the payee's disregarded income amount is **not** an income amount order.

Example

The child support assessment for parents, M and F, is based on a court order which sets M's child support income amount at $56,000. This is an income amount order for M. F can still make an estimate election.

Example

Parents, M and F, enter into a child support agreement for child support for their child, A. The agreement states that M will pay A's school fees and the costs of all school excursions and uniforms. It states that an annual amount of $8,000 is to be credited against M's child support liability. M applies to CSA for acceptance of the agreement. CSA accepts the agreement and starts a new child support period reducing the annual amount that M pays F by $8,000. The child support assessment is based on M's taxable income for the last relevant year of $72,000. Three months later M's income has reduced. M contacts CSA and estimates earning $50,000 during the last 12 months of the child support period. M is able to make an estimate. The child support agreement is an agreement for the payment of child support other than by payment of periodic amounts to the other parent. The provisions of the agreement are not an income amount order.

Example

The child support assessment for parents, M and F, is based on a change of assessment decision. The

child support percentage used in their assessment was adjusted to take into account F's high costs of contact with their children. The change of assessment decision is not an income amount order. If the change of assessment decision had increased F's exempt income by a specified amount, it would not be an income amount order.

What period does an estimate cover?

An estimate period starts on the day the parent made the estimate to CSA (or the day the child support period started if the parent made the estimate before the child support period). The estimate period ends at the end of the child support period (section 60(5)) - the remaining period. However, a parent may choose to make the estimate for 12 months rather than the whole remaining period, and in this situation the estimate period ends at the end of the 12 months (section 60(6)). Once an estimate is accepted, the estimate period is not altered by events such as the acceptance of a new estimate or the commencement of a new child support period. The estimate itself can cease to affect the assessment for later parts of the original estimate period (for example, if another estimate is lodged) but the estimate period for that estimate remains the same.

When CSA reconciles an estimate, it must work out the parent's income for the whole estimate period. CSA annualises the income from the whole estimate period and uses this to amend any part of the period still affected by the original estimate.

Refusing to accept an estimate

CSA can refuse to accept an estimate if it is satisfied that the parent's income is likely to be higher than their estimated amount (section 60A).

CSA will consider all the circumstances and may obtain further information, either from that parent or a third party (e.g., an employer). A history of underestimating alone is not enough to refuse to accept an estimate.

CSA will give a parent the opportunity to show that their estimate is accurate before it will refuse to accept an estimate.

If CSA refuses to accept an estimate, it will give the parent written notice of the decision.

Reviewing an estimate

CSA can review an estimate to find out if the estimate is still accurate and, if not, to help the parent get their estimate right.

A parent is required to tell CSA of any event that affects the accuracy of their estimate. This obligation is outlined in the notice that is sent to a parent when an estimate is accepted (section 160).

CSA can also review an assessment based on an estimate if it finds out that the estimate is no longer accurate.

CSA can review an estimate in 2 ways:

- CSA can amend an assessment based on an estimate if it becomes aware of an event that has affected the accuracy of the estimate, or if the parent tells CSA that the event has occurred (section 63A).
- CSA can amend an assessment based on an estimate if it has sent the parent a notice under section 161 (section 63B). (See chapter 6.2, heading Information gathering powers under the Assessment Act).

CSA will only review an estimate under section 63B if:

- Every attempt has been made to contact the parent but they cannot, or will not, provide any information, or consent to any amendments, or lodge a new estimate.
- There is a reliable indication that the discrepancy is more than 10% of the original estimated amount.
- All efforts to gather income information from third parties has been exhausted, and
- There is still not enough reliable information to proceed with an amendment under section 63A.

If a parent complies with a notice issued under section 161 CSA can only amend the assessment from the date that the parent complied with the notice. If a subsequent estimate has been accepted, CSA cannot amend the earlier estimate.

It may be more appropriate not to review an estimate at a particular time, but to allow the estimate to be reviewed or reconciled later when information that is more reliable is available.

Events

An event can provide a trigger for reviewing an estimate.

An event can include:

- an occurrence that was not expected when the estimate was made (e.g., starting a new job or non-payment of an expected contract fee),
- the first day on which the actual rate of income earned exceeded the rate of estimated income (i.e., the first day the estimated income was inaccurate).

Effect of an estimate

If CSA accepts a parent's estimate, their annualised estimate becomes their child support income amount for the purposes of assessing the annual rate of child support payable in a child support period on or after the date of the estimate (section 61(1)). CSA will amend the assessment to take the estimate into account (section 61(3)).

An estimate doesn't prevent a later income amount order (section 61(2)), court departure order or agreement (section 61(5)) from affecting an assessment.

Revoking an estimate

A parent can only revoke an estimate by making a new estimate (section 62(1A)). A parent can't revoke their estimate if an income amount order was made after the estimate was accepted (section 62(3)).

If a parent revokes their estimate and makes a new estimate then, for the purposes of assessing the annual rate of child support payable in a child support period on or after the date of the new estimate, their child support income amount is the annualised amount of the new estimate (section 63(1)). CSA will amend the assessment to take the estimate into account (section 63(3)).

Reconciling an estimate

After an estimate period ends, CSA will compare the parent's estimate with their actual income for the estimate period. If a parent has earned more than their estimated income in the estimate period, CSA will reconcile the parent's last estimate.

CSA cannot reconcile an estimate until both the estimate period and the child support period(s) have ended.

The actual income must be:

- calculated on all taxable income and supplementary amounts the parent earned within the whole of the period covered by the parent's estimate, and
- compared against the last estimate.

CSA will ignore the following things when it reconciles an estimate:

- whether it has previously reviewed the parent's estimate,
- any estimates that have been revoked because of a new estimate (although CSA can review these estimates if it believes they were inaccurate),
- any income the parent earned before or after the estimate period, and
- whether the child support period ended early (for example, because the ATO issued a new tax assessment for the parent).

If the parent's actual income earned over the estimate period is more than their estimate, CSA must amend the assessment. It will do this by using the parent's annualised actual income as the parent's child support income amount for all the days in the assessment still affected by the parent's estimate.

Example

F lodged an estimate on 27 May 2004 for the child support period 1 July 2004 to 30 September 2005. F estimated earnings $15,000 over the full child support period (annualised to $12,000). F's 2004-2005 tax assessment issued on 2 August 2005. A new child support period commenced from 1 September 2005.

F's estimate period ends on 30 September 2005. The child support period ended on 31 August 2005. The earliest time that CSA can reconcile the estimate is 1 October 2005.

Example

M lodged an estimate on 29 June 2004 for the child support period 1 July 2004 to 30 September 2005. M elected to make a 12-month estimate for the period 1 July 2004 to 30 September 2005 for $25,000. M's 2004-2005 tax assessment issued on 13 July 2005. A new child support period commenced on 1 August 2005. The end of M's estimate period is 30 June 2000. The child support period ended on 31 July 2005. The earliest that CSA can reconcile the estimate is 1 August 2005.

Estimate penalties

CSA may require a person to pay an estimate penalty when it reconciles (but not reviews) their estimate. An estimate penalty applies when a parent's actual income for an estimate period is 110%, or more, of their estimated income (section 64A(1)). The penalty is 10% of the difference between the liability based on the original estimate and the final liability based upon the child support income amount determined (section 64A(2)).

An estimate penalty is a debt due to the Commonwealth (section 64A(3).

Remission of estimate penalties

CSA can remit an estimate penalty, either in whole, or in part (section 64A(4)) where:

- the difference between the taxable income and supplementary amount and the estimated income was due to an amendment of the tax legislation, or a change to a ruling or determination under the tax legislation, or
- CSA is satisfied that it would be fair and reasonable to remit the penalties in the circumstances.

If there are no grounds for remission but the parent does not have the capacity to pay or the amount is comparatively small, CSA can decide not to pursue the penalty.

Amendment of a tax law, ruling or determination

When making an estimate a parent can't be expected to know that a change to the tax legislation or a change to a ruling or determination will increase their taxable income and/or supplementary amount.

Example

If an expense that was deductible in previous years is no longer deductible, a parent's taxable income may be higher than their estimate by the amount of the deduction.

This does not apply where a parent's taxable income is amended for other reasons (for example, taxpayer error).

Fair and reasonable to remit the penalties in the circumstances

What is fair and reasonable depends on the circumstances of each case. Those circumstances do not need to be special, exceptional or unusual.

CSA will remit estimate penalties if the parent did not intend to misuse the estimate provisions to defer payment. CSA will infer an intention to misuse the estimate provisions if a very low estimate is made but the parent was employed, or if a parent has underestimated in previous periods.

CSA will consider whether a parent should have been aware of the conditions and implications of using an estimate.

A parent should use reasonable care and all information available to estimate their income. If their circumstances change they should make a new estimate or advise CSA of the change in circumstances. CSA will not remit an estimate penalty unless a parent has a reasonable explanation for failing to make a new estimate (for example, the parent was overseas or had communication difficulties which delayed them making a new estimate before the end of the child support period).

Failure to mitigate the effects of the incorrect estimate income does not necessarily mean that the parent intended to misuse the estimate provisions. However, if a parent acts to mitigate the effects this could

indicate that they did not intend to avoid or defer the liability.

Example

> M becomes aware of the difference between the estimated income and taxable income and supplementary amount. M contacts CSA for advice and arranges to pay the arrears that will result from a reconciliation of the estimate. M has attempted to mitigate the effect of the underestimation. CSA will consider this when deciding whether to remit the estimate penalty imposed.

CSA will remove any penalty that has been imposed incorrectly (for example, through error or miscalculation, or by a subsequent variation which decreases the liability).

Frequently asked questions

Can CSA amend any part of the child support formula when reviewing an estimate?

Answer: No. CSA can only consider whether or not to amend the child support income amount of the parent and not any other part of the child support formula (eg, annual rate, child support percentage).

When reviewing an estimate is there any discretion in calculating the child support income amount?

No. The child support income amount must be the income the parent will earn from the date of the event (or notification date) until the end of the estimate period. CSA cannot exclude amounts that the parent received in the period, or include amounts the parent received before or after the estimate period.

How should an estimate be reviewed when more than one event has occurred since the estimate was accepted?

CSA needs to work out the income earned from the date of the earliest event resulting in an increase in income and take into account all further income fluctuations. This can include income earned in a period that is now covered by a subsequent estimate.

How is an estimate reviewed when a lump sum has been received?

Lump sums are treated no differently to 'regular' assessable income. Receipt of a lump sum will usually be an event for reviewing purposes. CSA needs to work out the income earned from the event date (or notification date) until the end of the original estimate period taking into account any assessable lump sum payment within that period.

How are multiple estimates reviewed?

Every estimate has to be considered separately. There has to be an event for each estimate before it can be reviewed and amended.

Version 1.6

Issued 1 January 2008

< Previous Next >

4.3.4: Family Law Act orders affecting a child support assessment

Context

Orders under the Family Law Act may affect a child support assessment.

Legislative References

Section 60D, 66M and 69VA *Family Law Act 1975*

Division 4.2.4, Rule 4.16 *Family Law Rules 2004*

Sections 4 and 8A *Child Support (Assessment) Act 1989*

Explanation

The following is an explanation of how CSA will interpret Family Law Act orders that affect the assessment of child support

- orders in relation to step-children
- declaration that a person is a parent of a child
- orders for residency and contact that have been contravened without reasonable excuse

Orders in relation to step-children

A payer's step-child is considered to be their relevant dependent child if the step child is in the payer's sole or major care and there is an order in force under section 66M of the Family Law Act in relation to the payer and the step-child. The inclusion of a relevant dependent increases a liable parent's exempt income and reduces the amount of child support payable.

To be able to get an order under section 66M the payer must be married, or have been married to a parent of the step-child (section 60D(1) of the Family Law Act). Payers in de facto relationships are not able to get orders under section 66M for children of their partner that are in their care.

For an order to be made under section 66M there must be proceedings between the child's parent and the payer about child maintenance (*Mulvena and Mulvena and Butler and Edwards* [1999] FamCa 280 and an *unreported decision of Faulks J* CAF 620 of 1998).

In making an order under section 66M the court has to take into account:

- The objects and the principles of the Family Law Act
- The length and circumstances of the marriage
- The relationship between the step-parent and the child
- The arrangements for maintenance of the child
- Any special circumstances which would result in injustice or hardship to any person.

If a payer is living with their spouse and step-child there may be no basis for the court to order that the step-parent pay child maintenance for the step-child (Unreported decision of Brewster FM [2003] FMCAfam320 and an *unreported decision of Family Court at Newcastle, per Mullane J*, TV803 of 2001, made on 2 March 2005).

If the payer and his or her spouse consent to an order it can only be made if notice has been provided to those who may be affected by it. The Family Law Rules, Division 4.2.4, Rule 4.16, require that the applicant serve a copy of the application, affidavit and financial statement on the step-child's other parent and any other person likely to be affected by the order sought. This would include CSA and any parent or carer of a

child that the step-parent has a duty to maintain.

Declaration that a person is a parent of a child

If parentage is in issue in proceedings under the Family Law Act a court can require evidence and make a conclusive declaration about parentage (section 69VA of the Family Law Act). A declaration under section 69VA will satisfy CSA that a person is a parent of a child if an application is made for a child support assessment.

If CSA has refused to accept an application for an assessment and the court later makes a declaration CSA is taken to have accepted the application. If there were other reasons for refusal apart from parentage CSA must reconsider the decision.

If the application to court was made within 28 days of the applicant being advised that the application for assessment had been refused the assessment will start on the day the child support application was made.

If the application to court was made outside that 28 day period the assessment will start from the day the declaration was made. Or, if there were other grounds for refusal of the initial application for assessment, the date the application is accepted.

Orders for residency and contact that have been contravened without reasonable excuse

This topic is covered in more detail in the chapter 2.2 Eligibility (including parentage and care).

Version 1.5

Issued 1 January 2007

< Previous Next >

2.5.3: Making a decision on an application

Context

The Assessment Act sets out how CSA makes a decision to accept, or to refuse, a child support agreement.

Legislative References

Sections 91, 91A, 92, 96, 98T, and 98U *Child Support (Assessment) Act 1989*

Clause 10, Schedule 1 *A New Tax System (Family Assistance) Act 1999*

Explanation

In deciding whether an agreement is a child support agreement, CSA may act on the basis of the application, any documents accompanying the application, and the agreement itself. CSA is not required to conduct any inquiries or investigations before making a decision (section 91).

An agreement or a consent order?

An order for a change to the assessment that is made by consent under Part 7 of the Assessment Act may be signed by both parents and contain provisions that can be in a child support agreement. However, a court order is not a child support agreement. A parent does not have to apply to CSA for acceptance of a court order. When CSA is notified that a court has made an order for a change to the assessment, it is obliged to amend the child support assessment to give effect to that order (section 119 of the Assessment Act).

An agreement during a change of assessment process

If either parent has applied for a change of assessment under Part 6A of the Assessment Act and the parents enter into a child support agreement before the change of assessment decision is made, CSA must decide to accept or refuse the agreement (section 98U). See chapter 2.6 for details of how CSA will make this decision.

Making a decision to accept or refuse a child support agreement.

If a parent applies for CSA to accept a child support agreement outside the change of assessment process, the way CSA will make a decision will depend on whether the payee is receiving, or has applied for, Family Tax Benefit (FTB) Part A at more than the base rate.

Payee does not receive, and has not applied for, more than the base rate of FTB Part A.

CSA must accept the agreement if:

- the payee is not receiving, and has not applied for, more than the base rate of FTB Part A on the day CSA received the application for acceptance of a child support agreement; and
- CSA is satisfied that the requirements of an application for acceptance of an agreement are met.

Payee receives, or has applied for, more than the base rate of FTB Part A

If the payee receives or has applied for more than the base rate of FTB Part A, CSA must refuse to accept the agreement unless there is a child support assessment in force immediately before the application is made (section 92(4)). (The payer and payee are both entitled to reapply for acceptance of the agreement after either of them applies for a child support assessment and CSA accepts that application.)

If there is an administrative assessment in force on the day CSA received the application for acceptance of a child support agreement and the payee receives, or has applied for more than the base rate of FTB Part A,

CSA must send a copy of the agreement to Centrelink (sections 91A(1) and (2)) (except if the payer and payee have reconciled). Centrelink has to decide whether, if CSA accepts the agreement, the payee will have taken 'reasonable action to obtain maintenance' for the child (section 91A (3)).

Centrelink must advise CSA of its decision (section 91A(4)). If Centrelink decides that the agreement does not pass the 'reasonable action to obtain maintenance' test (known as an adverse decision) it has to advise both parents in writing (section 91A(5)).

CSA must accept an agreement:

- if Centrelink has decided that the agreement passes the 'reasonable action to obtain maintenance' test, and
- CSA is satisfied that the requirements of an application for acceptance of an agreement are met.

CSA must refuse to accept the agreement if Centrelink has made an adverse decision in relation to the agreement (section 92(3)). The payer and payee can both seek a review of Centrelink's adverse decision. CSA will refer customers dissatisfied with Centrelink's decision to Centrelink to pursue their review rights.

Notification of the decision

Once CSA has decided to accept, or refuse, an agreement it will notify both parents and advise them of their objection and appeal rights.

Version 1.1

Issued 18 February 2003

< Previous Next >

6.10.1: Family violence

Context

CSA operates in a sensitive environment and must avoid, as far as possible, actions which could contribute to family violence.

Legislative References

Section 60D *Family Law Act 1975*

Explanation

Definition of family violence

Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that person or any other member of the person's family, to fear for, or to be apprehensive about, his or her personal well being or safety (section 60D Family Law Act).

Family violence and Centrelink customers

A parent who receives more than the minimum rate of Family Tax Benefit for a child may be required to take reasonable action to obtain maintenance from their former partner for that child. This would usually mean applying for a child support assessment. However, a payee can seek an exemption from this requirement where there is a risk of family violence.

Centrelink provides social work services for parents who are experiencing violent family situations. Centrelink social workers provide short-term counselling and support. They can also arrange referrals to community services to meet the immediate and longer term needs of parents in matters such as accommodation, legal and family counselling, health, material assistance and training.

Identification of parents at risk

Centrelink staff may identify parents at risk of family violence. If this occurs before a parent applies for a child support assessment, Centrelink may grant an exemption and the parent will not contact CSA at all. CSA may receive a letter of exemption from a Centrelink social worker for a case where the payee has already applied for a child support assessment.

CSA staff are sometimes the first point of contact for people who are at risk of family violence. The parent may openly state that they are at risk of family violence, or they may only imply that there is a risk.

Although a person may be subject to, or at risk of, violence, they may not perceive this to be the situation. It is necessary to be alert to a person's perception of their situation. Where the parent does not perceive a risk of

violence it will usually be difficult for CSA to detect there is in fact a risk.

Other organisations and third parties may contact CSA about customers who are at risk of family violence as a result of taking action to obtain child support. CSA will not ignore any information it receives about threatened violence, no matter where that information comes from. CSA must confirm the information before acting on it. It will do this by consulting with the parent identified as being at risk by the informant.

Management of cases

Where CSA identifies a parent as being at risk of family violence, the parent's case will be referred to an authorised Restricted Access Case (RAC) officer. Access to computer and paper file records of these parents must be in accordance with agency guidelines concerning restricted access customers (See chapter 6.3 Privacy, secrecy and proof of identity, heading Restricted access customers).

Each CSA region will have a nominated officer to assist staff with the management of cases identified as being at risk.

Referrals

CSA staff will not have the expertise to deal with many of the matters associated with family violence. Nor are they expected to have this expertise. However, CSA must be able to advise parents who are at risk of family violence where they can get help.

CSA sites will maintain networks of organisations that offer this kind of specialised help. Such organisations include welfare agencies, Legal Aid and Community Legal Centres and local support groups. They also include those organisations that represent the interests of people from non-English speaking backgrounds.

Information about community groups in each locality is also available on CSA's Community Services Directory.

Options for parents

Where a parent is identified as being at risk CSA should discuss available options with the parent. This could include details and consequences of:

- Proceeding with an application
- Continuing collection
- Private collection
- Ending the child support assessment
- Reviewing an exemption

Wherever possible, the parent must make their own decision about whether and how to pursue collection of child support and CSA will support the parent's decision in relation to their case.

CSA recognises that a parent at risk may adopt one course of action for a period of time and may later adopt another course if the situation has changed. CSA will provide parents with all options and encourage them to contact CSA to discuss their case if their situation changes.

Proceeding with an application

During a registration interview a CSA officer may become aware that the applicant may be at risk. The applicant should be advised that continuing with the application means that CSA will need to contact the payer. If the applicant has concerns about that contact they can withdraw the application and apply to Centrelink for an exemption from applying for child support, if necessary. The parent should be advised to reapply for child support if an exemption is not granted.

Continuing collection

A payee may decide that they wish the assessment to continue and to be collected by CSA.

In such cases, CSA will take particular care to manage the case in a sensitive and appropriate manner. Strategies to reduce the likelihood of violent behaviour and provide safety for the parent and the children should be adopted in consultation with the payee, e.g. advising the payee before it commences enforcement action and before it contacts the payer to discuss liabilities and collection action. CSA may also refer the payee to other organisations for support.

Private Collection

A payee can decide to collect child support from the other party privately rather than have CSA collect it for them. CSA will explain that it will still make and amend child support assessments, and send letters to each parent about their child support assessments. Both parents will still have access to the administrative provisions of the scheme (e.g. change of assessment and objections).

Where a payee receives more than the minimum rate of Family Tax Benefit, CSA will advise them that Centrelink will adjust any benefits received as if they receive the full amount of child support from the payer.

Where the payee undertakes private collection, CSA will manage the case in a sensitive and appropriate manner. Strategies to reduce the likelihood of violent behaviour and provide safety for the parent and the children should be adopted in consultation with the payee. CSA may also refer the payee to other organisations for support.

CSA will not require payees at risk of domestic violence to start collecting their own child support privately. (See chapter 5.6 Ending and reapplying for CSA collection, heading Registrar initiated ending of collection)

Ending a child support assessment due to family violence

A payee who does not receive more than the minimum rate of Family Tax Benefit can elect to end their child support assessment. CSA will end the case and advise the payee they can reapply for a child support assessment at any time in the future (section 151 Assessment Act).

If a payee who receives more than the minimum rate of Family Tax Benefit is considered to be at risk of family violence, CSA will suggest they contact a Centrelink social worker for a risk assessment. CSA cannot accept the payee's election to end the assessment unless Centrelink approves it (sections 151(4) and 151A Assessment Act). If the Centrelink social worker grants the payee an exemption, they will immediately advise CSA in writing. CSA cannot end the assessment without receiving an election from the payee. If the payee has not already made an election to end their assessment, CSA will contact the payee and invite them to make one. (See chapter 2.8 Making amending and ending assessments, heading Electing to end an assessment)

When CSA accepts a payee's election to end a child support assessment due to the threat of family violence, it will record details of the reason why the case was ended on the customer's case file and computer record.

Reviewing an exemption

Centrelink will review each case where it has granted a payee an exemption from taking maintenance action. The purpose of the review is to see whether parents' circumstances have changed, and if so, whether the exemption is still appropriate.

If the social worker finds that the parent is no longer at risk from violence or that it is no longer appropriate for the payee to be exempt from taking reasonable maintenance action, the parent will be required to apply to the agency for an assessment. Some parents may have had no previous child support case, others may have ended the case under section 151 of the Assessment Act.

Where a payee applies for a child support assessment after previously having been granted an exemption, CSA will exercise the utmost care and sensitivity. An RAC officer will implement strategies for managing the case to ensure that CSA's actions do not contribute to any resumption of family violence.

Reporting threats of family violence

CSA will make a record of any conversation with a person threatening violence and any conversation with the person who is the subject of a threat. The record may be required as evidence in court proceedings.

Where a person makes a threat against another person, the matter should be referred to a senior officer (team leader or site manager) who should ensure that the incident is reported and consider whether the matter should be reported to the police (see CSA Staff Security guide).

The secrecy provisions in the Child Support legislation allow CSA to disclose the threat to the person and to ask them whether they want CSA to report the incident (section 16 Registration and Collection Act and section 150 Assessment Act). The disclosure is for the purposes of the Child Support legislation because CSA must disclose the threat in order to talk to the payee about appropriate future collection activities.

CSA will usually consult with the threatened person before deciding to report a threat of violence to the police, but this is not a requirement (section 16(3)(e) Registration and Collection Act and section 150(3)(e) Assessment Act). Where there is an immediate or urgent need to prevent an offence, CSA will report a threat to the police without prior consultation with the threatened parent. There may also be occasions where the officer handling the matter will report a threat to the police against the wishes of the threatened parent, because they believe the threat to that parent's safety is so serious.

Debriefing

Family violence matters are stressful for parents. They can also be stressful for CSA staff dealing with the situation. Senior CSA officers will ensure that a staff member has an opportunity to debrief after they receive a threat of violence, and offer them an opportunity for counselling.

Version 1.0

Issued 1 October 2002

< Previous Next >

2.4.4: The payer has a high income

Context

The amount of child support payable is capped by limiting the income used for a payer.

Legislative References

Sections 5, 42 and 156 *Child Support (Assessment) Act 1989*

Explanation

For the days in any child support period after 1 July 2006 a payer's income is 'capped' at 2.5 times the annual equivalent of all employees average weekly total earnings for the child support period (EAWE). If a payer's child support income amount exceeds the cap their adjusted income amount is reduced to:

> 2.5 times the annual equivalent of the relevant EAWE less the exempted income amount.

Example

> M is paying child support to F for one child, A. M has a taxable income for the relevant year of $280,000 and no supplementary amount. 2.5 times EAWE for a child support period that starts on 1 September 2006 is $104,702. M has no relevant dependants so the exempted income amount is $13,983. The child support percentage for one child is 18%. The annual rate of child support for the child support period is calculated:
>
> | | |
> |---|---|
> | Reduced adjusted income amount | = $104,702 - $13,983
= $90,719 |
> | Annual rate of child support | = $90,719 ´ 18%
= $16,329 |
>
> (The annual rate is rounded up or down to the nearest whole dollar (section 156)).

Version 1.5

Issued 1 July 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.3.3: CSA secrecy provisions

Context

The two child support Acts contain secrecy provisions. These restrict the communication of 'protected information' and specify when and to whom CSA can lawfully release information.

Legislative References

Sections 16 and 16AA *Child Support (Registration and Collection) Act 1988*

Sections 150 and 150AA *Child Support (Assessment) Act 1989*

Explanation

Protected information

Protected information is personal information that a person obtains while performing their duties under, or in relation to, the Child Support legislation. Any personal information gathered by CSA, its employees and contractors, and other government agencies for the purposes of administering the Child Support legislation is protected information.

People covered by the secrecy provisions

The secrecy provisions of the Child Support legislation apply to all people occupying positions where they may obtain protected information about a CSA customer in the course of their duties under, or in relation to, the Child Support legislation. These are:

- the Child Support Registrar,
- the Minister for Human Services,
- the Minister for Families, Community Services and Indigenous Affairs,
- the Secretary of the Department of Human Services,
- the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA),
- the CEO of Centrelink,
- the CEO of Medicare,
- a CSA officer,
- a DHS officer,
- a FaHCSIA officer,
- a Centrelink officer,
- a Medicare officer,
- the Commissioner of Taxation
- a person employed or appointed by, or providing services to, the Commonwealth,
- the Secretary of the Attorney-General's Department or an officer of that department who has received information in relation to overseas maintenance orders or the enforcement of child support overseas,
- any person if the information concerns a credible threat to the life, health or welfare of a person
- a person with a 'sufficient interest'
- a payee of a registered maintenance liability who has notified the Registrar in accordance with section 113A of the Registration and Collection Act of their intention to institute private payee enforcement proceedings.

The secrecy provisions continue to apply to a person after they cease performing those duties.

Offence to record or communicate protected information

It is an offence under the secrecy provisions for a person to make a record of any protected information. It is also an offence for a person to communicate protected information about a person to someone other than that person (section 16(2) of the Registration and Collection Act, section 150(2) of the Assessment Act.

The exception is where the person records or communicates the information for the purposes of the Child Support legislation, or where they are required to do so as part of their duties under, or in relation to, the Child Support legislation (section 16(2A) of the Registration and Collection Act, section 150(2A) of the Assessment Act).

This means that CSA can make a record of personal information where it needs this information to administer a customer's child support case. CSA staff can access and use this personal information when they need it to carry out their duties in CSA, but not for other purposes. CSA can disclose protected information about a customer to the customer, his or her authorised representative, or to a person authorised by law. When a CSA officer discloses information to a person outside of CSA, they must identify the individual to ensure it only passes information to a person entitled to receive it.

Another offence under the secrecy provisions applies to the unauthorised use of information by persons other than those listed above. For example, this offence would apply where personal information from CSA is sent incorrectly to a person (e.g. a letter is sent to the wrong person) and that person then records, communicates or otherwise uses that person information (section 150AA of the Assessment Act and section 16AA of the Registration and Collection Act). This offence does not apply if the personal information was obtained legally from a source other than the records of CSA or the Department.

The penalty for breaching the secrecy provisions of the Child Support legislation is imprisonment for up to 1 year. (See Chapter 6.8 Offences and prosecution for more information on the secrecy offences).

When CSA will disclose a customer's information to another person

Certain provisions in the Child Support legislation require CSA to provide protected information about a customer to a person other than that customer. It is not an offence to disclose protected information where the disclosure is required or authorised by law.

- Disclosure by consent
- Disclosure to the other parent
- Disclosure to a person other than the other parent
- Disclosure to a customer's authorised representative
- Disclosure to other government agencies
- Disclosure to any person to prevent credible threat
- Disclosure to a court
- Disclosure to the Social Security Appeals Tribunal
- Disclosure to Commonwealth investigating and auditing agencies
- Disclosure to the Minister
- Disclosure to persons with a 'sufficient interest'

Disclosure by consent

CSA is authorised to communicate protected information to a person who has the consent of the person (to whom the information relates) to obtain that information (section 150(3)(f) of the Assessment Act and section16(3)(f) of the Registration and Collection Act).

Disclosures to the other parent

Assessment Notices: CSA discloses some personal information about one parent to the other parent, in child support assessment notices. This information can include the parent's name and income, whether the parent is in receipt of social security benefits, the number of dependent children the parent has, and the names and dates of birth of any other children the parent is assessed to pay child support for (section 76 of the Assessment Act). The purpose of this disclosure is to provide the other parent with enough information to understand how the child support assessment is calculated and, if they think the assessment is unfair or incorrect, to exercise their rights to challenge the assessment. This disclosure is required by law and is

permitted under the Privacy Act.

Information about debt recovery action: CSA is also authorised to inform a payee of action taken to recover their child support debt (section 113(2) of the Registration and Collection Act). This means that CSA may disclose some personal information about the payer to the payee. CSA will not disclose personal information that is not directly relevant or necessary to keep the payee informed (e.g. CSA will not disclose the name of the payer's employer; that they are unemployed; or the name of their bank).

Examples

> CSA advises M (the payee) that it is taking litigation action and seeking a judgment against the property of F (the payer). CSA does not advise M of the details of F's property.
>
> CSA advises F (the payee) that it issued a warrant of execution against M (the payer) which was returned because the court was unable to find any assets to seize.
>
> CSA advises F (the payee) that it has intercepted M's tax refund.
>
> CSA advises M (the payee) that it is arranging employer withholding to collect child support from F (the payer). It does not tell M the name of F's employer, or the date that F started work.

Information for private payee enforcement proceedings: Necessary information may be released by CSA to a requesting payee (section 150(4G) of the Assessment Act and section 16(4G) of the Registration and Collection Act) where they have notified CSA of their intention to institute court proceedings to recover a child support debt in accordance with section 113A of the Registration and Collection Act. However, any information released by CSA would be for those proceedings only and the person receiving the information would become subject to the secrecy provisions in his or her handling of the information.

Change of assessment: When a parent applies for a change of assessment CSA must send a copy of the application form (including detailed financial information and any accompanying documentation) to the other parent (section 98G(1) of the Assessment Act). CSA will then seek a response from the other parent and send a copy of the response to the applicant, along with any accompanying documents (section 98G(3) of the Assessment Act).

Objections: When a parent has objected to a CSA decision, CSA is required to send the objection and accompanying documents to the other parent (section 85 of the Registration and Collection Act). CSA will seek a response from the other parent. In order to make a decision in a way that is procedurally fair CSA will necessarily discuss a parent's personal information with the other parent. The purpose of this disclosure is to provide the other parent with enough information to be able to comment on any information that is being considered by CSA and to allow them to be able to exercise their rights to challenge the decision. This disclosure is necessary in order to make a decision under the child support legislation. As it is for the purposes of the child support legislation the disclosure is permitted by the secrecy provisions.

SSAT review: See heading Disclosure to the Social Security Appeals Tribunal below.

Disclosure to a person other than the other parent

The Child Support legislation allows CSA to obtain information and collect outstanding child support from third parties such as employers, banks, accountants, trustees in bankruptcy and lawyers. In order to do this, CSA may disclose some personal information about the child support customer to the third party. The information that CSA may disclose could include identity details such as name, address or date of birth, the amount of child support payable, and the amount of unpaid child support.

Example

> CSA sends a notice to F's employer which includes personal information about F. The notice includes F's name, address, date of birth and specifies the amount of child support to be deducted from F's wages.

Disclosure to a customer's authorised representative

CSA will communicate with a person that a customer has authorised to act on their behalf. This may involve CSA disclosing protected information about the customer to the customer's representative. However, CSA will not disclose to a parent's authorised representative any personal information about the other parent in the child support case. See the separate topic below for more information about CSA's policy for dealing with

authorised representatives.

Disclosure to other government agencies

CSA can communicate protected information to specified government agencies in certain circumstances.

Department of Human Services (DHS): CSA can communicate protected information to the Secretary of this department or an officer or employee of this department, where this is for the purposes of administering the Child Support legislation (section 16(3)(a) Registration and Collection Act and section 150(3)(a) Assessment Act).

Department of Veterans' Affairs (DVA): CSA can communicate protected information to the Secretary of DVA or an officer or employee of DVA, where this is for the purposes of administering Commonwealth laws for pensions, benefits or allowances (section 16(3)(b) Registration and Collection Act and section 150(3)(b) Assessment Act).

Centrelink: CSA can communicate protected information to the Chief Executive Officer of Centrelink or an officer or employee of Centrelink, where this is for the purposes of administering the Child Support legislation or Commonwealth laws for pensions, benefits or allowances (section 16(3)(ba) Registration and Collection Act and section 150(3)(ba) Assessment Act).

The information CSA discloses to Centrelink includes details of the amount of child support a parent is entitled to be paid and the amount of child support that CSA has paid to the payee. This allows Centrelink to assess and adjust parents' benefits accordingly. CSA can also pass on information that could help to identify fraudulent pension claims and respond to specific requests for information from Centrelink.

Medicare: CSA can communicate protected information to the Chief Executive Officer of Medicare or an employee of Medicare, where this is for the purpose of the performance of functions or the exercise of powers under the Medicare Australia Act 1973 (section 16(3)(bb) of the Registration and Collection Act and section 150(3)(bb) of the Assessment Act).

Australian Taxation Office: CSA can communicate protected information to a person performing duties under or in relation to legislation administered by the Commissioner of Taxation to allow them to perform those duties (section 16(3)(ca) of the Registration and Collection Act and section 150(3)(ca) of the Assessment Act).

CSA exchanges personal information such as names and tax file numbers with the Australian Taxation Office (ATO). This exchange enables CSA to determine when new taxable income information is available for parents. The exchange also allows CSA to identify when a person has both a tax refund amount due and a child support debt owing, so it may require the ATO to pay the amount to CSA to be applied to the debt.

Attorney-General's Department: CSA can communicate protected information to the Secretary of the Attorney-General's Department or an officer or employee of that Department, for the purposes of enforcing overseas maintenance liabilities (section 16(3)(d) Registration and Collection Act and section 150(3)(d) of the Assessment Act).

Contractors and other persons providing services to the Commonwealth: CSA can communicate protected information to a person performing duties under, or in relation to, the Child Support legislation to allow them to perform those duties (section 16(3)(c) of the Registration and Collection Act and section 150(3)(c) of the Assessment Act).

Disclosure to any person to prevent credible threat

CSA can communicate protected information to any person if the information concerns a credible threat to the life, health, or welfare of a person and:

- CSA believes on reasonable grounds that the communication is necessary to prevent or lessen the threat; or
- There is reason to suspect that the threat may afford evidence that an offence may be, or has been, committed against a person and the information is communicated for the purpose of preventing, investigating or prosecuting such an offence.

See section 16(3)(e) of the Registration and Collection Act and section 150(3)(e) of the Assessment Act,

Chapter 6.10 for information about family violence.

Disclosure to a court

It is not an offence under the Child Support legislation for CSA to communicate protected information to a court because a court is not a person. However, CSA is not required to communicate protected information to a court except for the purposes of either of the Child Support Acts (section 16(5) of the Registration and Collection Act and section 150(5) of the Assessment Act).

The exception is where a court has ordered CSA to provide information about a child's location (section 67J of the Family Law Act). These orders are referred to as Commonwealth information orders or location orders. They are mandatory and a person must comply with them in spite of any other law (sections 67M(6) and 67N(10). The secrecy provisions in the child support legislation also make it clear that CSA must comply with Commonwealth information orders or location orders (section 16(9) of the Registration and Collection Act and section 150(9) of the Assessment Act).

(See Chapter 6.4 for information about subpoenas).

Disclosure to the Social Security Appeals Tribunal

When a parent applies to the SSAT for a review of a CSA decision CSA is required to send the SSAT and the parties to the review a statement about the decision and copies of any documents that are relevant to the review of the decision (sections 95(3) and 96 of the Registration and Collection Act). The parties will generally be both parents and any other person who has been made a party. The SSAT may also ask CSA to provide additional information for the purposes of the review (section 103K). (See Chapter 4.2 for further information about SSAT review of decisions.) In some situations the SSAT may direct a person not to disclose the information in the statement or document or may limit its use for particular purposes (section 96). The SSAT can also direct CSA not to disclose a statement or document or can direct that its disclosure be restricted (section 98).

Disclosure to Commonwealth investigating and auditing agencies

- Commonwealth and Defence Force Ombudsman
- Privacy Commissioner
- Auditor-General or officers of the Australian National Audit Office.

These Commonwealth agencies are authorised by Parliament to investigate or audit CSA processes, and require CSA to provide information or documents. CSA officers can provide protected information to officers of these agencies because it is in the course of their duties under, or in relation to, the Child Support legislation (section 16(2A) of the Registration and Collection Act and section 150(2A) of the Assessment Act).

Disclosure to the Minister

CSA can communicate protected information to brief a Minister for various purposes in relation to his or her responsibilities. A 'Minister' means a Minister who administers child support legislation and the Prime Minister (section 150(4C) of the Assessment Act and section 16(4C) of the Registration and Collection Act).

Specifically, CSA may communicate protected information to a Minister in the following circumstances:

- So that the Minister can respond to complaints or issues raised with the Minister;
- In respect of a meeting or forum that the Minister is to attend;
- In relation to issues raised or proposed to be raised publicly (by or on behalf of the person to whom the information relates) so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, a misleading statement or an incorrectly held opinion;
- Where it involves a possible error or delay on the part of the CSA; or
- Where it involves an instance of an anomalous or unusual operation of the Child Support legislation.

Disclosure to persons with a 'sufficient interest'

In certain circumstances (listed under the subheadings below) disclosures may be made to a person with a 'sufficient interest' in the protected information. CSA must be satisfied that, in relation to the purposes of the

communication, the person has a genuine and legitimate interest in the information (sections 150(4) and 150(4A) of the Assessment Act and sections 16(4) and 16(4A) of the Registration and Collection Act). A Minister administering the child support legislation or the Prime Minister would have sufficient interest.

A further requirement which must be met (before information could be released in the circumstances outlined below) is that the information in question could not reasonably be obtained from a source other than the Department (section 150(4)(a) of the Assessment Act and section 16(4)(a) of the Registration and Collection Act).

Mistake of fact and integrity of the administration

CSA is able to communicate protected information to correct a mistake of fact about the administration of the child support legislation, if:

- the integrity of that administration would be at risk if the mistake were not corrected; or
- the mistake related to a matter in the public domain

Section 150(4B) of the Assessment Act and section 16(4B) of the Registration and Collection Act.

Missing persons

CSA is able to communicate protected information where the information is about a missing person where there is no reasonable ground to believe the missing person would not want the information communicated AND it is necessary:

- To assist a court; coronial enquiry, Royal Commission, department or authority, of the Commonwealth, a State or a Territory, in relation to the whereabouts of the missing person; or
- To locate a person (including the missing person).

See section 150(4D) of the Assessment Act and section 16(4D) of the Registration and Collection Act.

Deceased persons

CSA can communicate protected information where the information is about a deceased person where there is no reasonable ground to believe that the deceased person would not have wanted the information communicated and:

- It is necessary to assist a court, coronial enquiry, Royal Commission, department or authority, of the Commonwealth, a State or a Territory, in relation to the death of a person; or
- It is necessary to help a person locate a relative or beneficiary of the deceased person; or
- It is in relation to the administration of the estate of the deceased person.

See section 150(4E) of the Assessment Act and 16(4E) of the Registration and Collection Act.

CSA may also communicate protected information if the information is to establish:

- the death of a person; or
- the place where the death of a person is registered.

See section 150(4F) of the Assessment Act and 16(4F) of the Registration and Collection Act.

Version 1.4

Issued 3 August 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.3.1: Privacy Act

Context

The Privacy Act applies to CSA. It deals with individual privacy in both the public and private sectors.

Legislative References

Sections 5, 13, 14 16 *Privacy Act 1988*

Explanation

CSA is subject to the Privacy Act, which protects the personal information that government and businesses collect about individuals. The Privacy Act established standards for information collection, storage, security, correction, use, disclosure and access. It also provides safeguards for the collection and use of tax file numbers.

Personal information includes any information or opinion about an individual whose identity is apparent, or can reasonably be ascertained, from that information or opinion. Personal information does not have to be true and does not have to be recorded in a material form.

There are 11 Information Privacy Principles (IPPs) which regulate the treatment of personal information. Briefly, the IPPs have the effect that:

IPP 1 CSA may only collect personal information for lawful purposes directly related to a function or activity of CSA. It must collect information in a lawful and fair manner.
IPP 2 Where CSA collects personal information from a person about themselves, it must take reasonable steps to ensure the person knows why CSA is seeking the information; the law that requires CSA to collect the information; and any person or other organisation CSA usually gives the information to.
IPP 3 As far as possible, when CSA solicits personal information, it must ensure that the information is relevant to the purpose for which it is collected; that the information is up-to-date and complete; and that collecting the information does not unreasonably intrude on the personal affairs of the person concerned.
IPP 4 CSA must take reasonable steps to ensure that information is protected against loss and unauthorised access, use, modification or disclosure.
IPP 5 CSA must take reasonable steps to enable any person to find out whether it has personal information about them; and if so, the nature of that information, the main purposes for which it is used and how the person can access the record.
IPP 6 Individuals can access their own personal information subject to the *Freedom of information Act 1982*. (See chapter 6.6)
IPP 7 CSA must keep its information accurate, relevant to the purpose for which the information was collected, up-to-date, complete and not misleading. CSA must assist people who want to make changes to their records.
IPP 8 CSA must take reasonable steps to ensure personal information is accurate, up-to-date and complete before using it.
IPP 9 CSA must use personal information only for a purpose to which the information is relevant.
IPP 10 CSA cannot use personal information for a purpose other than that for which it was collected except:

- with the consent of the individual concerned
- where CSA believes on reasonable grounds that use of the information for that purpose is necessary to prevent a serious and imminent threat to someone's life or health
- where required or authorised by law

where reasonably necessary to enforce criminal law, a law imposing a pecuniary penalty, or for the protection of the public revenue
- for a purpose directly related to the purpose for which it was collected.

IPP 11 CSA must not disclose personal information to a person other than the individual concerned unless:

- one of the exceptions (but not the directly related purpose exception) in IPP 10 is made out, or
- the person concerned is reasonably likely to have been aware, or made aware under IPP 2, that information of that kind is usually passed to that person, body or agency.

The Privacy Act 1988 must be read in conjunction with other legislation, such as the secrecy provisions in the child support and tax Acts. The secrecy provisions of those Acts are more stringent than IPP 11.

The Office of the Federal Privacy Commissioner has published plain English guidelines on the IPPs, which can be obtained from its website http://www.privacy.gov.au or by calling 1300 363 992.

Version 1.2

Issued 27 August 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.4.4: Joint election to suspend collection after a change in care

Context

A court order or court-registered agreement does not stop being in force when the child leaves the payee's care. However, the payer and payee can make a joint election for CSA to suspend collection of the amounts payable for the child.

Legislative References

Section 39B *Child Support (Registration and Collection) Act 1988*

Explanation

CSA cannot end a stage 1 liability when it is advised that the child for whom child support is payable has left the payee's care. Unlike a child support assessment, a court order, or a court-registered agreement for child maintenance does not end when the payee ceases to provide ongoing daily care for the child. A payer can apply to a court for a variation to the order in these circumstances. If a court varied the order, CSA would amend the register accordingly.

Since 29 May 1995 there is a simple administrative way for parents to deal with this situation. A payer and payee can make a joint election for CSA to suspend collection of the liability during a period when the child is not in the payee's care (section 39B).

Who can apply to have the liability not enforced?

The payer and the payee can make a joint election (section 39B(3)). The payer cannot make an election alone, nor can the payee.

When can a payer and payee make a joint election?

The payer and payee can make their joint election at any time during the 'overall non-care period'. The overall non-care period:

- starts when the payee ceases to be the main provider of ongoing daily care for the child
- ends when the payee resumes being the main provider of ongoing daily care, or when the liability ends, if that happens first (section 39B(2)).

A payer and payee cannot make a joint election after the payee has resumed being the main provider of ongoing daily care for the child.

For what period is the liability suspended?

CSA will suspend collection from the date the payee ceased to be the main provider of ongoing daily care for the child, as long as the payer and payee made their joint election to CSA within 28 days of that date. Otherwise, CSA will suspend collection from the date the payer and payee made their joint election (section 39B(3)).

A joint election has no effect if the suspension period is included in an existing low-income non-enforcement period.

Can the liability be suspended for only one child?

The payer and payee must make an election for a particular child or children for whom child maintenance is payable. CSA will suspend collection of the entire liability if the election is made for the only child, or all the children covered by the order or agreement. If the election is made for one, or some of the children, CSA will

not enforce amounts attributable to that child (or those children), but the payer must continue paying the liability for the other children who remain with the payee (section 39B(4)).

What if the child returns to the care of the payee?

The payer or payee can elect for CSA to resume collecting the liability for the child when the child returns to payee's care (section 39B(5)). CSA will resume collection from the date the payee resumed ongoing daily care of the child, as long as the election was made within 28 days of that date. Otherwise, CSA will resume collection from the date of the election (section 39B(6)).

The election to have the liability enforced again will not take effect if at that time the liability is not enforceable because of a low-income non-enforcement period.

Example

M (payer) calls CSA on 23 March to say that child A is now living with M's parents. A left F's (payee) care on 15 March. CSA explains that M and F can make a joint election for CSA to suspend collection of the liability for A, otherwise CSA must continue to enforce the child maintenance order. M contacts F and together they call CSA on 25 March to make a joint election. CSA suspends collection from 15 March when A ceased living with F, because M and F made their the joint election within 28 days of that date.

Example

F (payer) calls CSA on 23 March to advise that child B left the care of M (payee) on 25 November. CSA explains that M and F can make a joint election for CSA to suspend collection of the liability for B, otherwise CSA must continue to enforce the child maintenance order. F and M have no contact. F asks CSA to contact M about the change in care. CSA speaks to M on 24 March. M confirms the change in care and makes an election for CSA to suspend collection of the liability for B. As both parties have made the election there is now a joint election, effective from 24 March, the date that the joint election is complete. The election was made more than 28 days after B left M's care, so CSA suspends collection from 24 March, the date of the joint election. F can apply to court for a variation to the court order to deal with amounts payable between 25 November and 23 March.

Version 1.0

Issued 1 October 2002

< Previous Next >

2.3.1: What is a child support period?

Context

A child support period is a period of time to which a child support assessment applies. The date of the start of the child support period determines which financial year of income CSA uses to make the assessment.

Legislative References

Sections 7A, 31, 34A, 34B, 34C and 93 *Child Support (Assessment) Act 1989*.

Explanation

Each child support assessment applies to a separate child support period. This does not mean that the rate of child support will stay the same for the whole period as the assessment may be amended to replace default incomes or to take account of various changes such as relevant dependants, changes in levels of care, or estimates. These amendments may apply to the whole child support period, or just part of the child support period, depending upon the nature of the change, when it occurred, and when CSA was advised of the change.

How long is a child support period?

A child support period is a flexible period of time, which cannot exceed 15 months. The length of the child support period for any assessment will vary according to the individual circumstances of child support case. These circumstances will determine when the child support period starts and ends (section 7A). The Act also requires CSA to make new child support assessments in various circumstances (sections 31, 34A, 34B, 34C and 93).

Last relevant year of income

CSA makes child support assessments using the last relevant year of income for the child support period to which the assessment will apply (sections 38 and 45). The last relevant year of income for a child support period is the last year of income that ended before the start of the period (section 5).

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.1.6 Late payment penalties

Context

Late payment penalties apply whenever a payer fails to pay their child support debt by the due date. CSA can remit late payment penalties in certain circumstances.

Legislative References

Sections 66, 67, 67A, 68, 69, 80 and 89 *Child Support (Registration and Collection) Act 1988*

Section 204(3) *Income Tax Assessment Act 1936*

Explanation

CSA imposes a late payment penalty on a payer whenever they fail to pay their child support debt by the due date (section 67). The purpose of a late payment penalty is to encourage payers to comply voluntarily with their obligation to pay child support and discourage late payment.

A late payment penalty is a debt due and payable to the Commonwealth (section 67(2)). Any late payment penalties CSA collects are paid into consolidated revenue. They are not paid to the payee.

CSA calculates late payment penalties on the unpaid balance of a payer's child support debt after the due date for each payment period. The rate of the penalty is linked to the rate that is the general interest charge rate under subsection 8AAD(1) of the *Taxation Administration Act 1953* (section 67(3)).

Prior to 1 January 2008 late payment penalties were linked to the annual rate of the penalty for unpaid income tax under the *Income Tax Assessment Act 1936* and were calculated as follows:

- Late payment penalty for a weekly payment period is 1/52 of the annual rate of penalty for unpaid income tax.
- Late payment penalty for a fortnightly payment period is 1/26 of the annual rate of penalty for unpaid income tax.
- Late payment penalty for a 4-week payment period is 4/52 of the annual rate of penalty for unpaid income tax.

Before 1 July 1992, late payment penalties were calculated monthly at the rate of 20% per annum, with a minimum penalty of $20 per month imposed whenever an amount of child support remained unpaid after the due date.

CSA will vary the Register to remove any late payment penalties applied because a payer failed to pay an amount of child support that is no longer due. Examples of situations where late payment penalty may be removed include instances where the payer's debt is adjusted to take into account:

- a variation to the liability because of a retrospective court order, or an amended child support assessment,
- a payment made directly to the payee on or before the due date, or
- the correction of an administrative error.

Situations where a late payment penalty should be removed in part or in full are not limited to these examples.

Remitting a late payment penalty

CSA has discretion to remit a late payment penalty in part or in full (section 68). CSA will use this discretion in

a way that will further the objectives of the child support scheme, according to the particular circumstances of each case.

There is no particular form for a payer to request CSA to remit late payment penalties. CSA can remit late payment penalties without a payer requesting that it do so, if there is sufficient information available to make a decision.

CSA can remit late payment penalties in any of the following 3 situations:

- The payer did not pay on time because of circumstances beyond their control, and they have taken reasonable action to mitigate those circumstances or their effects (section 68(1)(a)).
- The payer did not pay on time because of circumstances within their control, and they have taken reasonable action to mitigate those circumstances or their effects: and it would be fair and reasonable to remit the penalty having regard to those circumstances (section 68(1)(b)).
- There are special circumstances in the case which make it fair and reasonable to remit the penalty.

Circumstances beyond the payer's control

Some examples of circumstances that may be beyond a payer's control:

- the payer's employer failing to remit deductions to CSA
- short-term unemployment
- unpredictable adverse business conditions
- industrial accidents
- a debtor's failure to pay
- natural disasters.

Circumstances beyond the payer's control are not limited to these examples.

CSA will take into account the circumstances that applied at the time each payment was due and when each penalty accrued when deciding whether to remit penalties that accrued over a number of payment periods. It may be appropriate to remit the late payment penalty for one payment period but inappropriate to remit the penalty for another payment period.

CSA will remit the penalty in full if satisfied that the circumstances leading to the late payment were beyond the control of the liable parent if it is satisfied that the payer has taken reasonable action to mitigate the circumstances that contributed to late payment or the effects of those circumstances.

Circumstances within a payer's control

Some examples of circumstances that may be within a payer's control:

- financial difficulties due to a number of debts, such as rates and electricity, becoming due at the same time, or
- voluntary unemployment during which the payer takes no action to vary the liability.

Circumstances within the payer's control are not limited to these examples.

CSA will take into account the circumstances that applied at the time each payment was due and when each penalty accrued when deciding whether to remit penalties that accrued over a number of payment periods. It may be appropriate to remit the late payment penalty for one payment period but inappropriate to remit the penalty for another payment period.

CSA must consider whether the nature of the circumstances would make it fair and reasonable for CSA to remit the late payment penalty attributable to those circumstances. If so, CSA can remit the late payment penalty in part or in full but only if the payer can demonstrate that they have taken reasonable action to mitigate the circumstances that contributed to late payment or the effects of those circumstances.

Reasonable action to mitigate the circumstances that led to late payment, or the effect of those circumstances

CSA will consider any steps the payer has taken to reduce the effects of the circumstances that led to late payment. A payer's payment history may be sufficient to demonstrate the efforts they have made to meet their child support liability, in spite of the circumstances that led to the late payment.

Some examples of attempts to mitigate the circumstances that led to late payment, or to mitigate the effects of those circumstances:

- part payment of the liability
- attempting to or succeeding in borrowing to pay some or all of the liability
- negotiating with creditors or debtors or both
- paying in full following resolution of a dispute (e.g. over arrears or a payment made directly to the payee)
- making and meeting an acceptable arrangement for payment.

Attempts to mitigate the circumstances that contributed to the delay in payment, or mitigate the effects of those circumstances are not limited to these examples.

Payment following the commencement of legal action to obtain payment, or from intercepting an income tax refund, is unlikely to be a mitigating circumstance by itself. It will, however, depend on the circumstances of the case. For example, action may prompt the liable parent to make an acceptable arrangement for payment, or the liable parent may draw CSA's attention to an expected refund.

Special circumstances

CSA can remit part or all of a late payment penalty if satisfied that there are special circumstances in the case that would make it fair and reasonable to do so. Special circumstances include those all parents face regardless of whether or not they separated. If the parents had not separated, the children would have had to bear their share of the changed financial circumstances.

Examples of special circumstances may include:

- a serious accident,
- being unaware of the registration of the liability while being traced,
- an unexpected and unavoidable expense,
- serious health problems, or
- the payer acting on incorrect advice.

Special circumstances are not limited to these examples.

It may also be appropriate for CSA to remit a late payment penalty if it is satisfied that a payer made their first payment late because they did not understand the operation of the child support scheme. This would not be an acceptable reason for CSA to remit a penalty on more than one occasion.

Where CSA is satisfied that special circumstances exist that would make it fair and reasonable to remit a late payment penalty, it does not have to consider whether a payer has taken reasonable steps to mitigate the circumstances that led to late payment, or the effect of those circumstances.

Fair and reasonable to remit the penalty

CSA must be satisfied that it is fair and reasonable to remit a late payment penalty if the late payment was cause by circumstances within the payer's control, or because of special circumstances. CSA will take into account the payer's payment history, current income and necessary commitments, as well as the nature of the circumstances that led to late payment. It would not usually be fair and reasonable to pay other debts or acquire assets in preference to paying child support debts, although this depends on the predictability and nature of the expense.

Notification of decision

If CSA refuses a payer's request that it remit a late payment penalty in part or in full, it must provide the payer with notice of that decision in writing (section 68(2)). CSA's notice must also state that the payer can object to CSA's decision (sections 68(3)(a) and 80) and apply to the Social Security Appeals Tribunal for a review of CSA's objection decision if dissatisfied with it (sections 68(3)(b) and 89).

Version 1.7

Issued 1 January 2008

< Previous Next >

6.2.6: Legal professional privilege

Context

When CSA officers seeks information an employer, parent or third party may claim that legal professional privilege applies to the document or information.

Legislative References

Section 161 *Child Support (Assessment) Act 1989*

Section 120 *Child Support (Registration and Collection) Act 1988*

Explanation

Legal professional privilege is:

the right of a person to have withheld from evidence communications between that person and his/her legal adviser (or between the legal adviser and a third party), made in the course of obtaining legal advice or with reference to litigation.

(The CCH Macquarie Concise Dictionary of Modern Law)

or:

A common-law principle which provides that confidential communications between legal practitioner and client for the ... purpose of the client obtaining, or the legal practitioner giving, legal advice or for use in existing or contemplated litigation need not be given in evidence nor disclosed by the client or by the legal practitioner, without the consent of the client.

(Butterworths Legal Words Dictionary)

CSA's statutory powers to obtain information provided in section 120 and 161 do not override legal professional privilege *(Daniels Corp International v ACCC [2002] HCA 29).*

Wherever possible, CSA will avoid disputes over legal professional privilege. Accordingly, CSA officers will:

- seek information and documents from the parent concerned rather than their legal adviser,
- avoid using the information-gathering powers in a way that may lead to claims of privilege if there is an alternative means of obtaining the information.

Legal professional privilege and access to employer records

Wage records are not communications made in the course of obtaining legal advice or with reference to litigation. CSA will resist any claim of legal professional privilege in relation to wage records.

Legal professional privilege and requirements to provide information or attend and answer questions

Claims of legal professional privilege are unlikely to be encountered when exercising these powers. Information disclosed to a legal adviser does not become privileged, merely because it has been disclosed to a legal adviser.

Example

> M is seeking advice in relation to a property settlement and provides a list of assets to a legal adviser in the course of obtaining legal advice. M cannot refuse to provide details of the assets or refuse to answer questions about the assets on the basis of legal professional privilege, which applies to M's

communication to the legal adviser, not M's knowledge of the assets.

Legal professional privilege and requirements to produce documents

Claims of legal professional privilege are more likely to be encountered when CSA requires documents to be produced. CSA will not normally be interested in the communication of information to a legal adviser or the advice received from a legal adviser.

Example

M is seeking advice in relation to a property settlement and draws up a list of assets. M provides the list of assets and copies of bank statements to a legal adviser when obtaining legal advice. M can claim privilege in relation to the list provided to the legal adviser. M would not be able to claim privilege in relation to the bank statements. The list is a communication, the bank statements are not. While the list may attract privilege, CSA can still seek details of the assets from M under the power to provide information or attend and answer questions.

Version 1.2

Issued 27 August 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.2.4: Parentage

Context

CSA cannot accept an application for a child support assessment unless it is satisfied that the liable parent named in the application is a parent of the child.

Legislative References

Sections 5, 25, 29(2) and 29(3) *Child Support (Assessment) Act 1989*

Section 60H *Family Law Act 1975*

Explanation

The term a 'parent' has its common meaning. It also includes (section 5):

- an adoptive parent, and
- if the child was born as the result of an artificial conception procedure, a parent of the child under section 60H of the Family Law Act.

When a carer applies for a child support assessment CSA can be satisfied that the person they seek child support from is a parent of a child only in 8 fact situations (section 29(2)):

- the child was born while the person was married to the child's mother or father. A child is born during a marriage even if the parties to the marriage have separated as long as a divorce is not finalised (i.e. before the decree absolute).
- the person is named as the child's parent in a register of births or parentage information kept under Australian law or the laws of a prescribed overseas jurisdiction. CSA needs to sight a copy of the birth certificate or the applicant must provide a statutory declaration stating that the person they named as the liable parent is recorded as a parent on the child's birth certificate.
- an Australian court, or a court of a prescribed overseas jurisdiction has expressly found that the person is a parent of the child, or has made a finding that could not have been made unless the person was a parent of the child (and that finding has not been set aside, altered or reversed).
- the person has executed an instrument under an Australian law, or the law of a prescribed overseas jurisdiction (See chapter 1.5), such as a statutory declaration under the Oaths Act of an Australian state, acknowledging that they are the child's father or mother, and that instrument has not been annulled or set aside.
- the person has adopted the child.
- the person is a man and the child was born within 44 weeks of his marriage to the child's mother, which has since been annulled.
- the person is a man who was married to the child's mother and they separated, then resumed cohabitation for 3 months or less, and the child was born within 44 weeks of the end of that last period of cohabitation but after they divorced (after the date of the decree absolute).
- the person is a man who cohabited with the child's mother at any time during the period beginning 44 weeks and ending 20 weeks before the child was born, but they were not married at any time during that period. Cohabitation involves living together in a domestic relationship. CSA can consider the financial and social aspects of the relationship, the nature of the household and the sexual relationship between the 2 people, in deciding whether they cohabited.

CSA cannot be satisfied that a person is a parent of a child solely on the basis of the results of paternity tests, or a person's verbal acknowledgment of parentage. Only a court may determine that it is satisfied of a

child's parentage on the basis of other evidence.

Conflicting evidence

CSA does not need to conduct enquiries or make investigations. However, if evidence is available under more than one of the paragraphs in section 29(2) and the evidence conflicts, CSA can choose which person is more likely to be a parent of the child (section 29(3)). CSA does not have to be satisfied a person is a parent when one of the 8 fact situations exists if there is conflicting information which casts doubt on a child's parentage.

CSA can take into account other types of evidence when making a decision about conflicting evidence. CSA is not making a finding of parentage, but an administrative decision as part of a decision whether or not to accept an application for assessment.

If either parent believes that CSA should not have accepted an application, as there is no evidence that the payer is a parent, they can object to the decision to accept the application.

A payer who believes that they are not a parent of a child can apply directly to a court for a declaration under section 107 of the Assessment Act (See chapter 4.3).

Once CSA has accepted an application, it cannot cancel an assessment because the payer and payee agree that the payer is not a parent (*Child Support Registrar and Z and T [2002] FamCa 182)* or have better evidence. If a payer or payee later advises CSA that they have more evidence about the parentage of a child they should be advised of their right to object, to apply for an extension of time to object and/or to apply to a court. Alternatively, the payee may be able to elect to end their assessment.

A payee who is unable to provide proof of parentage is no longer required to lodge an objection to CSA's decision not to accept the application for an administrative assessment. Instead, the payee is able to take the matter directly to court to seek a s106A declaration (See chapter 4.3.2)

A child born as the result of an artificial conception procedure

A person who is a parent under section 60H of the Family Law Act is also considered a parent for the Assessment Act.

Section 60H applies to children born as a result of artificial conception procedures. A woman who gives birth to a child following an artificial conception procedure is legally that child's mother. If she was married and her husband consented to the procedure, he is the child's father. If she lived with a man as husband and wife on a genuine domestic basis, and he consented to the procedure, he is the child's father. A woman's husband or partner is presumed to consent to the procedure unless it is proved, on the balance of probabilities that he didn't.

In Western Australia, state laws provide for a woman's same-sex partner to be recognised as the other parent of a child born as a result of an artificial conception procedure. The birth mother is a parent in the ordinary meaning of the word, however, the same-sex partner is not a parent under section 60H of the Family Law Act and is therefore not a parent for the purposes of the Assessment Act. The same sex-partner may apply to a court in Western Australia for an order for child maintenance under the *Family Court Act 1997 (WA)*.

Version 1.6

Issued 23 January 2008

< Previous Next >

2.2.3: Eligible applicant - liable parent applications

Context

A liable parent can apply to CSA for a child support assessment.

Legislative References

Sections 25A, 26 and 26A *Child Support (Assessment) Act 1989*

Explanation

A person can make a liable parent application for an administrative assessment of child support for a child if they are:

- a parent of the child, and
- a resident of Australia on the day the application is made (or habitually resident in a reciprocating jurisdiction (See chapter 1.5), and
- seeking to pay child support for the child to an eligible carer, and
- not living on a genuine domestic basis with the person to whom they seek to pay child support.

A liable parent will generally not be sharing a residence with the person to whom they seek to pay child support. However, if parents are legally separated, but still reside together in the home they shared, they are not considered to be living together on a genuine domestic basis. Whether parents are separated, or are still living together on a genuine domestic basis, is a matter of fact and degree in each case. However, separation usually involves 3 elements:

- intention to end the relationship;
- action upon that intention; and
- communication of the intention to the other party.

A liable parent can only apply to pay child support to a person who is caring for a child under a child welfare law if that carer is the child's parent or relative (section 26A). Also see eligible child.

Example

> G cares for a grandchild, A, under a child welfare law applying in Victoria. If either, or both, of A's parents make a liable parent application they can nominate G as the person to whom child support will be paid.

If 2 or more people care for a child jointly, the liable parent must nominate only one of the joint carers as the eligible carer. If one of the joint carers is the other parent of the child, that person must be nominated as the eligible carer.

Example

> A, a child of M and F, is in the joint care of M and Z. If F applies for a child support assessment, F must nominate M as the person to whom they will pay child support.

Version 1.3

Issued 18 August 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.4.5: Suspension for unemployment

Context

A court order or court-registered agreement for child maintenance does not stop being in force when the payer is unemployed. However, the payer can apply for CSA to suspend collection of the amounts payable for the period that the payer is receiving a social security pension or benefit.

Legislative References

Section 17(1), 37B and 113A *Child Support (Registration and Collection) Act 1988*

Regulation 5A *Child Support (Registration and Collection) Regulations 1988*

Explanation

A payer may be unable to pay their child maintenance liability if they become unemployed. Many court orders do not address what should happen to the liability if the payer has a reduced income.

Since 29 May 1995 there has been an administrative option for the payer to apply for CSA to suspend collection of periodic amounts of child maintenance payable under a court order or court-registered agreement during a period in which they receive a social security pension or benefit (section 37B(2)).

From 19 July 2007 a payer can apply for CSA to suspend collection of periodic child maintenance payable under an overseas court order or court-registered agreement registered for collection in Australia.

What are the requirements for making an application?

A payer of a registered maintenance liability that arises under a child maintenance order or court-registered agreement for child maintenance can make an application to suspend their liability. They can make an application if they have applied for, or already receive a social security pension or benefit (section 37B(2)).

A payer of a registered maintenance liability who is in receipt of a social security pension or benefit may make an application after the period of liability under the court order has ended, if there are arrears owing.

A payer cannot make an application if their court order or court-registered agreement provides for the amounts payable to reduce, directly or indirectly, when they are unemployed or their income is substantially reduced (section 37B(3)).

When will CSA accept an application?

CSA will accept a payer's application if they:

- meet the requirements for making an application and
- satisfy the prescribed income test for the next social security payment after they make their application.

CSA will ask Centrelink to confirm that the payer receives a social security pension or benefit, and whether they satisfy the prescribed income test.

If CSA accepts the payer's application it will start a low-income non-enforcement period.

What is the prescribed income test?

The payer will satisfy the prescribed income test if the total amount of income they receive from social security pensions or benefits and other ordinary income is less than the maximum basic rate of pension payable (regulation 5A).

When does a low-income non-enforcement period begin?

The low-income non-enforcement period is a period during which no periodic amounts of child maintenance will accrue as a debt due to CSA. It begins on the day that the payer made their application, or an earlier date decided by CSA (section 37B(4)). The low-income non-enforcement period cannot begin:

- before the payer commences to receive a social security pension or benefit;
- before 29 May 1995, the commencement date of this provision; or
- after the day the payer lodged the application.

CSA will start a low-income non-enforcement period on the earliest day possible. The start date of the low-income non-enforcement period may be the date the applicant first began receiving the benefit they are receiving at the time of their application. A low-income non-enforcement period cannot be backdated to the beginning of a previous period when the applicant was in receipt of a benefit. The low-income non-enforcement period must be continuous.

However, CSA will not start the low-income non-enforcement period from a date that would create an overpayment for the payee. If the payer applies during a period when they satisfy the prescribed income test and they have already paid maintenance for some of this period, CSA will start the low-income non-enforcement period on the earliest day for which no maintenance was paid.

The payer is not liable to pay amounts to CSA for days in the low-income non-enforcement period. However, the payee can institute his or her own proceedings to recover these amounts during the low-income non-enforcement period (sections 37B(7A) and 113A).

When does a low-income non-enforcement period end?

The low-income non-enforcement period ends at the earliest of the following times:

- when the payer stops receiving a social security pension or benefit;
- when the payer does not satisfy the prescribed income test; or
- when the liability ends.

CSA will review the payer's benefit or pension status periodically to ensure that they continue to meet the prescribed income test.

Example

> A payer (M) has been unemployed since 24 February 2006. M has been receiving a social security benefit since 5 March 2006. No payments have been made since that time. On 25 August 2006 M contacts CSA and makes an application for a low-income non-enforcement period. M's court order does not have any provision for payments to be reduced during periods of unemployment. M satisfies the prescribed income test. The low-income non-enforcement period will begin on 5 March 2006.

Version 1.3

Issued 27 July 2007

< Previous Next >

5.3.1: Non-agency payments

Context

When CSA registers a child support liability for collection the amounts payable become a debt to the Commonwealth and are payable to the Child Support Registrar (section 30 Registration and Collection Act).

In some circumstances CSA may credit payments made directly to a payee or to a third party against a child support liability that is registered for collection by CSA. CSA may also credit the value of non-cash payments or the provision of services in the same way. CSA refers to these credits as 'Non-agency payments' (NAPs).

Legislative References

Section 71, 71A, 71B, 71C and 71D *Child Support (Registration and Collection) Act 1988*

Regulation 5D *Child Support (Registration and Collection) Regulations 1988*

Explanation

What is a non-agency payment?

A non-agency payment is one of the following types of payment:

- a payment made directly to a payee (section 71)
- a payment to a third party in discharge of a debt owed by the payee, the payer, or both (section 71A)
- a non-cash transaction such as a transfer of property or the provision of services (section 71B)

CSA can credit a non-agency payment to a child support debt if the payer and the payee both intended when the payment was made that it was a payment towards the 'enforceable maintenance liability'.

If the payment was of a kind specified in regulation 5D (known as a 'prescribed payment') CSA can credit the payment at a maximum of 30% of the ongoing liability each pay period, providing the balance of the child support is paid as it is due and payable (section 71C). For prescribed payments, it is not necessary for the payer and the payee to have had a mutual intention that the amount be a payment towards the 'enforceable maintenance liability'.

Was the payment in respect of an enforceable maintenance liability?

CSA can only credit payments if the payment was made when there was an enforceable maintenance liability. This includes payments made for arrears on ended cases. It can also include payments made after the liability becomes enforceable but before an application is processed.

Example

> M is liable to pay child support to CSA from 1 April 1999, which is the date that F applied to CSA. M asks CSA to credit $200 paid directly to F on 30 March 1999. M and F intended the payment to be for child support for April. CSA cannot credit the payment under section 71. At the time of payment there was no enforceable maintenance liability and the payment was a private payment to the payee. CSA cannot backdate the liability to a date before F's application.

Was a payment made?

CSA can only credit a non-agency payment if the amount has actually been paid or transferred. CSA will not credit the value of goods that the payer intends to transfer at a later time, or where the payer has allowed the payee use of those items.

Example

> M, the payer advises CSA that he has given F his car and that he wants the value of the car to be credited against his child support liability. F advises CSA that she agrees to the credit, but mentions that the car is still registered in M's name because he cannot transfer the ownership while he is paying it off. CSA does not credit the value of the car, because M still owns it. CSA suggests that M and F discuss a value for the use of the car and if they can reach agreement, ask CSA to credit this on an ongoing basis.

If a payer and payee disagree about whether a cash payment was made, or the amount of the payment, CSA will ask for evidence of the payment. CSA will decide, on the basis of all the evidence, whether or not a payment was made and the amount paid.

Acceptable evidence includes bank statements, cheques or receipts. CSA will also consider oral or written statements provided by both parents.

Example

> M, a payer, advises CSA that they paid $350 paid directly to the payee, F. When CSA asks F to confirm the payment F denies receiving it. M then supplies a bank statement, which shows a direct debit from M's account to an account at the same branch. CSA contacts F to discuss this evidence. F admits receiving the payment, but says they believed it was from Centrelink.

How is a non-cash payment valued?

Where parents agree about the value of a non-cash payment (e.g. a transfer of property or a service provided) CSA will use this agreed value (section 71B(2)(a)).

Where parents cannot agree about a value CSA will decide an amount (section 71B(2)(b)). CSA will first try to negotiate an agreed amount with both parents. If this fails, CSA will request further information from the parents to determine a value.

Further information could include an independent valuation from a professional valuer (for real estate, etc.), or a letter from a local real estate agent estimating the market value of the property when it was transferred, or a local council valuation. Where the non-cash payment involves the transfer of a motor vehicle the information sought could include a valuation from a car yard or local garage, or a list of prices showing the approximate value of an equivalent model. CSA can seek a receipt for items recently purchased.

Was the payment intended to be in lieu of child support?

CSA will accept a payee's advice that a payment, or the value of goods or services was intended as child support.

Where the parents disagree, CSA will seek evidence from both parents and decide on the basis of that evidence whether the relevant intention existed when the payment was made.

CSA will seek oral statements (or written, if either parent cannot be contacted by telephone) from both

parents about their intention at the time the payment was made and the circumstances surrounding the payment. Before making a decision CSA will discuss the evidence with both parents, so that they have an opportunity to respond or expand on their statements.

If CSA cannot obtain a statement from one of the parents, it will consider a statement made by the other parent and any other available evidence.

In making a decision CSA will take into account the following factors.

- Whether the parents have agreed that previous payments made in similar circumstances were for child support, as this may indicate the same intention in relation to the present payment.
- The circumstances in which the payment was made. For example, where a payer has made payments or provided goods as part of a contact visit, this may have occurred without the prior knowledge or consent of the payee.
- Any documents that support the case of either parent. For example, if there were legal proceedings in progress at or before the time of the payment there may be relevant document which refer to payments made by the payer to the payee or a third party.
- Whether one of the parents has previously stated that payment was to be credited but subsequently changed their statement. CSA will examine both statements to determine what their intention was at the time the payment was made.

Example

A payer M advises of payments of $2500 for school fees and clothing. M claims a credit for that amount under section 71A.

Scenario 1: The payee F agrees that the amounts were paid with the intention that they be credited against M's child support liability. CSA credits the total amount of $2500.

Scenario 2: F states that only an agreed amount of $2000 was intended to be credited against M's child support liability. F says that M agreed to pay $500 to cover half the cost of school uniforms and that this amount was in addition to M's usual child support. CSA contacts M, who confirms that arrangement. CSA credits an amount of $2000, a partial credit of the original $2500 claimed.

Scenario 3: The payee F states that the amount should not be credited, as the payments were additional to M's ongoing child support liability. F claims that there was no agreement or intention on F's part that the school fees and clothing would be in lieu of child support payments to CSA. F later sends in a copy of their property settlement which included a clause that M would pay all school fees and associated costs until their child turns 18 years of age. The amount is not credited. (Note: CSA would also exercise its discretion to refuse to credit this as a prescribed payment).

Example

The payer F asks for payments totalling $300 be credited. The total is made up of several amounts including a trip to the zoo, lunch at McDonalds, Nintendo games and a pair of sports shoes.

The payee M states that the payments were not intended as child support payments and that the child already had a perfectly good pair of sports shoes. M states that there has been no discussion regarding footwear and the child has said that the shoes were a birthday present from F. M contends that the trip to the zoo and computer games were also birthday presents.

F then agrees that some items were for the child's birthday but contends that the cost of the shoes ($150) should be credited as the child needed them.

There is no evidence that M intended that the shoes were to be credited as child support. The amount claimed is not credited. F is advised that M's agreement should be sought before purchasing similar items in the future.

Credit against future liabilities

Once a liability becomes an enforceable maintenance liability and an amount, whether cash, property, or the provision of services, is credited as satisfying a child support liability, it will be applied against any future amounts payable. An intention to credit against future liabilities is not required.

Prescribed non-agency payments

CSA can credit certain payments towards a payer's child support liability regardless of the intention of the parents at the time the payment was made (section 71C). Credit can be given up to a maximum of 30% of the ongoing liability, provided that the balance of child support is paid as it becomes due and payable. The balance can be paid in cash or in the form of a non-agency payment credited under s71 or s71A, or from money credited from another source such as a tax refund or payment from a third party.

CSA can only credit amounts paid on or after 1 July 1999. Prescribed payments can only be credited against a child support liability and not a liability for spousal maintenance.

The types of payments that can be credited in this way are listed or 'prescribed' by regulation (regulation 5D). They are:

- child care costs for the child who is the subject of the enforceable maintenance liability
- fees charged by a school or preschool for that child
- amounts payable for uniforms and books prescribed by a school or preschool for that child
- fees for essential medical and dental services for that child
- the payee's share of amounts payable for rent or a security bond for the payee's home
- the payee's share of amounts payable for utilities, rates or body corporate charges for the payee's home
- the payee's share of repayments on a loan that financed the payee's home
- costs to the payee of obtaining and running a motor vehicle, including repairs and standing costs

The date of notification of the payment is the trigger for commencing to credit up to 30% towards the current liability. If a payer satisfies the conditions and the amount of the payment is more than 30% of the enforceable maintenance liability in a given month, the payer will be said to have an 'uncredited' amount. This uncredited amount can be applied against the payer's enforceable maintenance liability in a later month provided the conditions for payment are again met.

CSA cannot credit an uncredited amount towards any child support arrears that accumulated prior to the payer notifying CSA of the prescribed payment. An uncredited amount can be applied to arrears that accumulate after the notification, but only when at least 70% of the liability is satisfied by cash or a non-agency payment credited under s71 or s71A.

Example

A payer has a current liability of $100 per month and owes $3000 in arrears.

In August 2006 the payer notifies CSA of a prescribed payment of $2000 made that month, however, no payments were made direct to the payee, or to CSA.

As a result the payer still owes $3000 and has an uncredited amount of $2000.

If the payer pays $70 in cash (or with a non-agency payment under s71 or s71A) by the due date for August 2006 (7 September 2006) then $30 from the $2000 uncredited amount is credited. The arrears of $3000 remain. The uncredited amount is reduced to $1970.

If the payer does not pay for the months of September and October but pays $210 for November, $90 of the uncredited amount can be credited (balance is $1880) and the arrears remain at $3000.

If the payer pays $1000 instead of $210 for November the additional amount of $790 would be credited against the original arrears of $3000. The payment in excess of 70% of the liability can be credited against existing arrears.

If a retrospective variation is made to a liability, whether it results in an increase or a decrease, the amount credited from a prescribed payment remains unchanged despite the fact that the percentage of the prescribed payment has changed.

If the payee of a private collect case later applies for registration of the maintenance liability and collection of arrears, CSA will calculate the unpaid amounts by taking into account any credit for prescribed payments that would have been available if the case were registered with CSA for collection.

If CSA is collecting child support through employer withholding, it will adjust the amount deducted to take into

account the prescribed payments. If the prescribed payment constitutes 30% of the payer's liability for 2 months or less then the excess cash will be refunded. If the prescribed payment constitutes 30% of the liability for a period greater than 2 months, the payer should be given the option of having their deductions reduced or given a cash refund.

Payees who are in receipt of more than base rate Family Tax Benefit need to be made aware that when a prescribed payment is notified to Centrelink it will be assessed under the maintenance income test by Centrelink even though 'uncredited' for CSA purposes. The whole amount will be assessed on the day that the payment was made to a third party or received by the payee.

Child care costs for the child who is the subject of the enforceable maintenance liability

A payer can claim credit for amounts paid for child care, less any amount that is refundable by the Family Assistance Office. The possibility of receiving a child care rebate in the future will not be taken into account in calculating the amount that can be credited.

Fees charged by a school or preschool for a child who is the subject of an enforceable maintenance liability

This can include school fees and levies, but not payment for non-compulsory camps, excursions, additional tuition or boarding costs. A school is an institution which mainly provides primary or secondary education.

It includes an institution providing technical and further education where the payment is for a course of secondary education.

Amounts payable for uniforms and books prescribed by a school or preschool for a child who is the subject of an enforceable maintenance liability.

From 12 April 2001 a payer can claim credit for books and uniforms prescribed by a school which they have obtained from any source. (CSA could previously only credit an amount paid for uniforms and books that the payer purchased from the child's school or preschool.) Amounts payable for books includes text books and exercise books but not stationery, computers, etc. Amounts payable for uniforms includes a school bag if prescribed by the school.

Fees for essential medical and dental services for a child who is the subject of an enforceable maintenance liability.

Essential medical and dental services are not limited to those services provided in an emergency.

A payer can claim only their actual costs. CSA will credit only the net amount after any rebate the person can claim from Medicare or a health insurance fund.

Prescribed payments include essential consultation fees for services provided by medical and dental practitioners, treatment by specialists, eye testing, Xrays, pathology tests, examinations and certain 'out-of-hospital' surgical procedures by Medicare approved practitioners. The cost of medication associated with essential treatment is also included, as well as equipment such as crutches or a vaporiser.

Prescribed payments include 'in-hospital' costs either as a public patient, or as a private patient in a public or private hospital. Costs can include accommodation and items such as theatre fees, anaesthetist costs, pathology, Xrays and medicines.

Prescribed payments may also include fees for medical or dental services not covered by Medicare, if they are essential for the child in the opinion of a practitioner approved by private health funds. These services include:

- Emergency ambulance services
- Physiotherapy
- Speech and eye therapy
- Chiropractic services
- Podiatry
- Psychological services
- Optometry and repairs

CSA will not allow a credit for fees for surgery or dentistry performed solely for cosmetic reasons. Where

there is a doubt a parent could ask the service provider for more information.

Examples

The cost of a nose reconstruction carried out by a cosmetic surgeon purely for cosmetic reasons would not be acceptable as a 'prescribed' payment. But the cost of a nose reconstruction which alleviated a breathing difficulty or was performed following an accident would qualify.

The cost of orthodontic work performed solely for cosmetic reasons will not qualify as a prescribed payment. However, if a general practitioner or orthodontist indicated that the work was necessary for the child's psychological wellbeing or essential dental health it may be justified.

The payee's share of amounts payable for the payee's home

This includes the payee's share of amounts payable for rent, a security bond and utilities (such as gas, electricity, telephone and water).

Where the payer makes payments for which they and the payee are jointly responsible, CSA will credit only the payee's share. In the absence of evidence to the contrary, this will be half the total amount. Prescribed payments can only include those for a home in which the payee lives however the bill does not need to be in the payees name.

Example

A payee and payer separate in March 2007 and the payee continues to live in the home they shared. The home has gas connected which is in the payer's name because the payer had originally organised the connection when they had moved into the home. The payer pays a gas account (that is in the payer's name) of $500 in November 2007 which covers the period from 1 July 2007 until 30 September 2007. At the time of payment the payee was the only party residing in the home and was thus solely responsible for the payment of the gas bill, this is regardless of the fact that the bill was in the payers' name. The payer applies for credit of this $500 as a prescribed non - agency payment. CSA will credit this amount.

Costs to the payee of obtaining and running a motor vehicle, including repairs and standing costs

This only includes payments that are necessary to keep the vehicle on the road and to maintain its safety. They can include car loan repayments or the payee's share of joint car loan repayments. They can also include non-compulsory insurance premiums where the payee is an existing contributor.

Discretion to refuse to credit an amount

CSA can refuse to credit a non-agency payment claimed under sections 71, 71A or 71C if satisfied that, in the circumstances of the particular case, the amount ought not to be credited (section 71D).

CSA may refuse to credit an amount in certain circumstances, including the following:

- The payee's agreement to credit an amount paid to a third party or payment made as a transfer of property was obtained through coercion or harassment. (However, where CSA is informed about this after it has credited the payment, it will be necessary for the payee to object to CSA's decision to credit the amount.)
- The payer is claiming a credit under section 71C for an expense they regularly meet that was taken into account in a change of assessment decision. For example, CSA or a court has reduced the annual rate (or refused to increase it) because the payer usually pays school fees, medical expenses for the child, mortgage or rent payments or any other prescribed payments.
- The payer is claiming credit under section 71C for an expense which they have undertaken to pay in a child support agreement in addition to their child support liability.
- The payer is claiming credit under section 71C for an expense that they are responsible to pay under the terms of a court order.
- The payer is claiming credit under section 71C for expenses for the child for which they are separately responsible. This applies to all cases including where the assessment is based upon the payer having shared care, or substantial/major contact of the children. For example, the payer claims credit for child care costs for the days when the child resides with payer. However, if the payer claims credit for a payment which they and the payee are jointly responsible, CSA has no basis for apportioning the payment between the parents and must credit the full amount.

Objections

A payee can object to CSA's decision to credit a non-agency payment (s80).

A payer can object to CSA's decisions to refuse to credit a non-agency payment (section 80).

Other options

If a non-agency payment is not credited there may be other options available such as:

- applying for a variation to a court ordered liability (See chapter 3.1)
- applying for a change of assessment under Part 6A of the Assessment Act (See chapter 2.6)
- applying for a departure order under part 7, Division 4 of the Assessment Act (See chapter 4.3)
- applying for an order under Part 7, Division 5 of the Assessment Act to have non-periodic or payments to third parties credited against an assessment (See chapter 4.3, heading Applications and orders under the Assessment Act heading Application for child support to be paid in a form other than periodic amounts)
- making a child support agreement under Part 6 of the Assessment Act providing for non-periodic amounts or payments to third parties to be credited against an assessment. (See chapter 2.5)

What happens to a credit if the liability is no longer payable to CSA or an assessment has ended?

Court order or child support assessment ends

If a liability or assessment ends with an uncredited non-agency payment amount, CSA will reduce the NAP amount to nil.

Child support no longer payable to CSA

When CSA receives an election to end CSA collection it will notify the parents of any uncredited non-agency payments on the child support account. Similarly, CSA will notify the parents of any uncredited non-agency payments on the child support account when it requires the payee to make private arrangements to collect their child support. The payer and payee will then have the option of:

- using the credit to reduce the liability during private collection
- delaying opting out of collection until no credit remains
- agreeing to reduce the credit to nil
- or, where the parents can't agree, the credit remains on the payer's account to be applied if the payee later applies for collection.

Version 1.5

Issued 23 January 2008

< Previous Next >

3.3.2: Notification of court orders and court-registered agreements

Context

CSA must be notified when a court makes an order or registers an agreement that starts or varies a registrable maintenance liability.

Legislative reference

Sections 16A, 17, 17A, 18, 23 and 25 *Child Support (Registration and Collection) Act 1988*

Explanation

Notification requirements

Since 1 June 1988, when a court makes an order or registers an agreement that starts a registrable maintenance liability that is a periodic amount for maintenance of a child or of another party to a marriage, the payer and payee must notify CSA within 14 days. They must also notify CSA within 14 days when a court makes an order or registers an agreement on or after 1 June 1988 that varies a registrable maintenance liability of this type, even if the liability is not already included in the Child Support Register (section 23).

From 1 January 2007, when a court makes a parentage overpayment order the payer and payee of the order (i.e. the former payee and payer of the child support assessment) must notify CSA within 14 days. They must also notify CSA within 14 days when a court makes an order or registers an agreement on or after 1 January 2007 that varies a parentage overpayment order, even if the liability is not already included in the Child Support Register (section 23).

A payee who notifies CSA about a court order or court-registered agreement can also elect for CSA not to collect maintenance for them (section 23(3)).

Form of notice or application

A payee who wants CSA to collect a registrable maintenance liability for them can use CSA Form 1 (FM1) to notify CSA about a court order or court-registered agreement.

A payee who does not want CSA to collect maintenance for them can use CSA Form 3 (FM3) to notify CSA about a court order or court-registered agreement.

A payer can use CSA form 2 (FM2) to notify CSA about a court order or court-registered agreement.

These CSA forms can be lodged personally or by post at any CSA office, or electronically through CSA's website. CSA also requires a copy of the relevant court order or court-registered agreement.

CSA can also accept notices and applications for collection over the telephone, but will still require a copy of the relevant court order or court-registered agreement.

What does CSA do when it is notified about a court order or court-registered agreement?

When the payee notifies CSA about an order or agreement CSA registers the liability for collection. CSA registers the liability for collection by entering the details of that liability into the Child Support Register. (See chapter 5.1 CSA collection)

CSA also maintains records of the registrable maintenance liabilities that it has been notified about, which are not registered for collection. The records of these unregistered registrable maintenance liabilities are not part of the Child Support Register. They include registrable maintenance liabilities that the payer notified CSA about, and registrable maintenance liabilities that the payee notified CSA about, but elected not to have CSA collect for them.

Version 1.1

< Previous Next >

3.4.2: New order or court-registered agreement that affects the liability

Context

CSA must vary the Register when it receives a copy of a new court order or court-registered agreement that affects the liability.

Legislative References

Section 37 *Child Support (Registration and Collection) Act 1988*

Explanation

CSA must vary the Register to give effect to the terms of a new order or court registered agreement that affects a registered maintenance liability. CSA will vary the liability from the date required by the order or agreement. The date that CSA received the order is not relevant.

The actual wording of the order is of critical importance. CSA will take care to understand the previous order and how the new order affects the liability. (See chapter 3.5 Interpreting stage 1 court orders).

Example

> CSA registered a stage 1 liability in 1994. The payee provides a new order to CSA on 12 April 2002, which was made in the Family Court on 22 January 2002. The order states that the previous order is varied so that the payer F is to pay $75 per week for each of the children named in the order from 1 January 2002. CSA varies the Register to show that the liability is $75 per child per week from 1 January 2002.

Version 1.0

Issued 1 October 2002

< Previous Next >

4.1.2: Decisions made under the Assessment Act to which a parent may object

Context

A parent may object to certain decisions under the Assessment Act.

Legislative References

Sections 79D and 80 *Child Support (Registration and Collection) Act 1989*

Explanation

A parent may object to particular decisions made under the Assessment Act. A person cannot apply to the SSAT for a review of a decision unless there has been an objection to the CSA's decision. In most cases, a parent cannot apply to court about a child support assessment unless there has been an objection to CSA's decision about that assessment and a review of the objection decision by the SSAT.

Section 80 provides that parents can object to the following decisions by CSA that were made under the Assessment Act:

- to accept an application for assessment (unless the ground of objection is that the person is not the parent of the child)
- not to accept an application for assessment (unless one of the reasons for refusal was that CSA was not satisfied that the person from whom the application sought payment of child support is a parent of the child)
- a decision as to the particulars of the assessment
- to make or refuse to make a change to the assessment under Part 6A of the Assessment Act
- to accept or refuse to accept a child support agreement
- to refuse to remit an estimate penalty in whole or part.

A decision to accept an application for assessment

A payer can object to CSA's decision to accept a payee's application for a child support assessment. A payee can object to CSA's decision to accept a payer's application for a child support assessment. The objection can be on any grounds other than the person's belief that they are not a parent of the child.

Example

> CSA accepts F's application for an assessment of child support for her child A, payable by M. F provided a statutory declaration stating that M is named as A's father on A's birth certificate.
>
> M advises CSA that he believes F's statutory declaration is untrue. M does not accept that he is A's father, so he refused to sign the Register of Births, Deaths and Marriages form to have his name included on A's birth certificate.
>
> M can object to CSA's decision to accept the application for assessment. He believes that he is not A's father but this is not the ground of his objection. The ground of his objection is that there is no proof of paternity of the kind required by the Child Support legislation.

If a person disagrees with CSA's decision to accept an application solely because they believe they are not a parent of the child, they can apply to a court under section 107 or section 107A of the Assessment Act for a declaration that the payee is not entitled to an administrative assessment of child support payable by them.

A decision not to accept an application for assessment

An applicant can object to CSA's decision not to accept their application for an administrative assessment unless one of the reasons for refusal was that CSA was not satisfied that the person from whom the application sought payment of child support is a parent of the child.

If a payee disagrees with CSA's decision to refuse their application because they are not satisfied that the person from whom the payment of child support is sought is a parent of the child they can apply to a court under section 106A of the Assessment Act for a declaration that they are entitled to an administrative assessment for the child. If there was more than one reason for refusing the application the payee can apply to court for a declaration that they are entitled to have CSA reconsider the decision because the person from whom the application sought payment is a parent of the child.

An objection cannot be lodged if CSA refuses to accept a liable parent application for an administrative assessment because CSA was not satisfied under section 29 that the applicant is a parent of the child. In this instance the applicant may be able to apply to court for a declaration under s106B of the Assessment Act that the applicant is entitled to an administrative assessment for the child.

A decision as to the particulars of a child support assessment

A payer or payee can object to CSA's decision about the particulars of their administrative assessment.

The particulars of a child support assessment are all the elements of the child support formula including

- the child support income amount of each parent
- the exempt income amount of one or both parents
- the disregarded income amount of the payee
- the adjusted income amount of each parent
- the child support percentage
- the annual rate of child support

Example

M disagrees with CSA's decision to reduce the child support assessment because F has lodged an estimate of income. M can object to CSA's decision because it is a decision in relation to the child support income amount of F, the parent who lodged an estimate.

Example

F disagrees with CSA's decision to change the level of care in the child support assessment. F can object to CSA's decision because it is a decision in relation to the child support percentage used in the assessment.

Example

F disagrees with the amount of child support CSA worked out in accordance with their child support agreement with M. F can object to this decision because it is a decision in relation to the annual rate of child support.

A decision to make or refuse to make a change to the assessment under Part 6A of the Assessment Act (Change of assessment)

A payer and payee can object to CSA's decision to make a change of assessment decision or to refuse to make a change of assessment decision. The parent who objects does not have to be the person who applied for a change of assessment.

A decision to accept or refuse to accept a child support agreement

A payer or payee can object to CSA's decision to accept or refuse to accept their child support agreement.

A decision to refuse to remit an estimate penalty in whole or part

A payer or payee who requests CSA to remit an estimate penalty can object to CSA's decision to refuse to remit that estimate penalty.

Version 1.4

Issued 1 January 2008

< Previous Next >

4.1.5: Extensions of time to lodge objections

Context

If a parent has not objected within 28 days (or 90 days for parents who reside overseas in a reciprocating jurisdiction) of the date they received CSA's notice of decision they can lodge an objection with an application for an extension of time.

Legislative References

Sections 82 and 83 *Child Support (Registration and Collection) Act 1988*

Explanation

A parent can apply for an extension of time if they wish to object after the objection period has ended. This topic explains how a parent applies for an extension of time. It also explains how CSA makes decisions on applications for extensions of time.

Applying for an extension of time

If a parent does not lodge an objection within 28 days (or 90 days for parents who reside overseas in a reciprocating jurisdiction) they can apply for an extension of time to lodge their objection (section 81(1)). The application for an extension of time can be made over the phone or in writing (section 82(3)). The parent must explain why they did not lodge the objection within 28 days (or 90 days if resident in a reciprocating jurisdiction) (section 82(2)). The extension of time application can be made with the objection or after the objection has been lodged.

Making a decision to grant or refuse an application for an extension of time

CSA has 60 days (or 90 days if the parent who applied is a resident of a reciprocating jurisdiction) to consider the application and make a decision to grant or refuse it (sections 83(1) and (1A)).

CSA is deemed to have refused an application for an extension of time if it fails to make a decision within the prescribed period (section 83(2)). CSA will still make a decision on those applications unless the parent applies to the Social Security Appeals Tribunal (SSAT) for review of the deemed refusal decision. If the parent has applied to the SSAT, and CSA later decides to grant an application for an extension of time the SSAT will treat the application for review as if it were an application for review of the new decision (See chapter 4.2).

CSA will make a decision on an application for an extension of time taking into account that Parliament intended that parents lodge an objection within time. This gives some certainty to parents who organise their arrangements around CSA's decisions. In determining whether to grant an extension of time CSA must consider all of the factors listed below.

- reason for delay
- the merits of the objection
- any prejudice to the other parent
- whether the customer rested on their rights
- prejudice to the general public.

CSA will not grant an extension of time simply because a parent has made out any one of the above factors. All factors must be considered and given appropriate weight.

Reasons for delay

CSA will consider whether the parent has an acceptable explanation for failing to lodge the objection within the prescribed period. It will take into account issues such as illness, absence from home and any efforts the parent made to lodge the objection within time or as soon as possible outside of the time frame.

Although the reason for delay is important, CSA will not grant an application for an extension of time in all cases where the parent has an acceptable explanation for their late objection.

Merits of the objection

When considering the merits of the objection, CSA must decide whether, on face value, the customer has an arguable case. CSA will not make any judgement about information and evidence provided by the customer in support of their objection or decide whether the customer is likely to succeed.

Although the merits of an objection are an important consideration, CSA will not automatically grant an extension of time in all cases where the objection has merit. In some cases the delay may be so long that the interests of justice would not be served by changing a decision.

Prejudice to the other parent

CSA will consider whether the delay means that it would be difficult for the other parent to provide information relevant to the objection. For example, parents may not have kept receipts for child support payable to the other parent after a non-agency payment has been credited and the period for an objection has expired.

It will also consider whether the outcome of a successful objection would create an overpayment or significant arrears of child support. This takes into account the other parent's right to rely on the decision after the period for an objection has expired.

Customer resting on their rights

CSA will consider whether the customer rested on their rights or took action to make CSA aware that the decision was being contested. CSA will consider the length of the delay and whether any communications that occurred between the CSA and the customer in the period after the decision was made indicate that the customer intended challenging the decision. CSA will also take into account whether the customer has raised their concerns in other ways, e.g. a complaint to CSA or the Ombudsman.

Prejudice to the general public

CSA will consider whether the granting of the request would cause prejudice to the general public.

Procedural fairness

If CSA is considering granting an extension of time it will advise the other parent of the application. It will give them an opportunity to respond to the information CSA is taking into account.

CSA will not contact the other parent and advise them of the application unless it is considering granting the application for an extension of time.

Notice of decision

Refusing to grant an extension of time

CSA must advise the parent who made the application if it refuses to grant an extension of time (section 83(3)). CSA's written notice must include reasons for the decision and advise the parent they can apply to the SSAT for a review if they disagree with the decision (section 83(4)).

Granting an extension of time

If CSA decides to grant an extension of time, the same notice requirements apply as for a decision refusing to grant the application (section 83). CSA will also notify the other parent if an extension of time is granted. If CSA grants the extension of time, the 28 or 60 day (120 days where one of the parents resides overseas in a reciprocating jurisdiction) period for CSA to consider the objection starts from the date the extension is granted (section 83(6)).

Version 1.7

Issued 1 January 2008

< Previous Next >

4.1.6: Making a decision to allow or disallow an objection

Context

CSA's objection decisions must follow the requirements set out in the child support legislation. Objection decisions must also follow general administrative law principles.

Legislative References

Section 7 *Administrative Decisions (Judicial Review) Act 1977*

Sections 85, 86 and 87 *Child Support (Registration and Collection) Act 1988*

Explanation

This topic explains

- statutory requirements for making a decision on an objection
- the Objections Officer
- considering an objection
- decisions an Objections Officer can make
- decisions involving discretion
- review of an Objection Officer's decision
- notifying parents of the decision

Statutory requirements

In most cases when CSA receives a valid objection it must, as soon as practicable, provide a copy of the objection, and any document that accompanied the objection, to the other parent (section 85(1)).

CSA is not required to provide a copy of the objection to the other parent if the objection is to a decision to refuse to remit penalties imposed on the payer or an employer or, for an objection to a decision to make, or refuse to make, a departure determination under Part 6A of the Assessment Act, if CSA is satisfied that the rights of the other parent will not be affected by any possible decision on the objection (section 85(2)). CSA may be satisfied that an objection decision will not affect the rights of the other parent where the objection raises no new issues and the original change of assessment decision is the correct or preferable decision.

Example

A parent objects to a change of assessment decision on the grounds that the decision did not take into account his moral duty to provide financial support for his mother. The original decision-maker considered this matter and decided correctly that it could not be taken into account under any of the change of assessment reasons. The decision is otherwise the correct or preferable decision. CSA is satisfied that the rights of the other parent will not be affected by the objection decision and is therefore not required to serve a copy of the objection on the other parent.

Where the other parent is served with a copy of the objection, they may lodge a notice in response to the objection within 28 days of receiving the copy of the objection and any document that accompanied the objection (sections 86(1) and (2)). For cases where one parent resides abroad in a reciprocating jurisdiction while the other parent resides in Australia, the time for lodging a response is extended to 90 days for the parent residing in the reciprocating jurisdiction (section 86(2A)).

CSA must consider any information provided by both parents about the decision that is the subject of the objection. CSA will not make a decision on an objection before it receives the notice in response, unless the

period for returning the notice to CSA has ended. The exception would be where a parent advises that they do not wish to lodge a notice in response to an objection.

CSA will also make reasonable efforts to obtain information that is relevant to the original decision from either parent or from third parties. CSA policy about obtaining information from children applies. CSA officer dealing with the objection must use their judgement about the appropriate method of obtaining information in each case.

CSA will provide each parent with an opportunity to comment on information that may be taken into account in a way that is adverse to them.

CSA must make a decision within 60 days of the day on which it received the objection (section 87(1)). For cases where one parent resides abroad in a reciprocating jurisdiction while the other parent resides in Australia, the time to make a decision is extended to 120 days (section 87(1A)).

A parent can make an application to the Federal Court or Federal Magistrates Court on the basis that CSA has failed to make a decision on an objection within the required time (section 7 *Administrative Decisions (Judicial Review) Act 1977*). However, CSA is still obliged to make a decision on an objection even if the 60 day (or 28 or 120 day) period has ended (*Garnaut v Child Support Registrar* [2004] FCA 1100).

The Objections Officer

The Child Support Registrar and Regional Registrars have authorised certain CSA staff to consider objections on their behalf. Only authorised 'Objections Officers' will make decisions on an objection (See chapter 6.1, heading Authorisation to make decision on another's behalf).

An Objections Officer must not deal with an objection to a particular decision if they were involved in making that original decision.

Considering an objection

An objection is a request for reconsideration of an original decision. The Objections Officer will reconsider a decision by 'standing in the shoes of the original decision-maker'. They must go through the same steps as the original decision-maker, come to their own conclusions about the relevant facts of the case and determine how the law is applied to those facts. They do not simply check whether there is any obvious error in the original decision on the basis of the grounds raised in the objection.

They must take into account all the relevant information available to them even if it was not available to the original decision-maker. This includes all information that could have been made available to the decision-maker at the time of the original decision.

If the Objections Officer is allowing an objection to a change of assessment decision they can either:

- make a new decision (either to change the assessment, or refusing to change the assessment) taking into account all information including a change of circumstances or new reason, or
- where the objection is to a pre-conference refusal decision, set aside the original decision to refuse to change the assessment and refer the application to a Senior Case Officer to consider the application afresh. (This two-step process is necessary because CSA must arrange for exchange of documents between the parents and for each parent to have a conference with the Senior Case Officer before a change of assessment decision can be made).

Example

M, a payer, makes a change of assessment application because of the high costs involved in enabling the parent to spend time with, or communicate with the child in the assessment. The Senior Case Officer finds that there is no reason to change the assessment because M's costs do not amount to more than 5% of M's child support income amount.

M objects because the Senior Case Officer did not take into account all of M's air fares. M also provides details of significant medical costs for a new relevant dependent child who was born after the original decision was made.

The Objections Officer considers all the information that is relevant to the costs M incurs in spending time with or communicating with the child and finds that the costs do exceed 5% of M's child support income

amount. In making a decision to change the assessment the Objections Officer also takes into account the information about the medical costs for M's new relevant dependent.

The Objections Officer will ensure that the process followed is procedurally fair and will give parents an opportunity to respond to information that is being taken into account.

Decisions an Objections Officer can make

The Objections Officers must decide to allow, partly allow or disallow the objection (section 87(1)). They do not simply look at the grounds of the objection and decide whether they agree or disagree with the original decision. The Objections Officer must make their own findings about the facts and apply the law to those facts in order to make the correct or preferable decision (*Garnaut v Child Support Registrar* [2004] FCA 1100). They then compare their decision with the original decision.

If the Objections Officer finds that it was not correct to make the original decision then they will allow the objection. The original decision is set aside and the assessment and/or Register are amended as if the decision had not been made.

If the Objections Officer finds that it was correct to make the decision but that some aspect of the decision is incorrect, they will partly allow the objection. The original decision is taken never to have been made and the Objections Officer will make a new and preferable decision to replace the decision. CSA will amend the assessment and/or Register in accordance with the new decision.

If the Objections Officer finds that the original decision was entirely correct they will disallow the objection.

Decisions involving discretion

If the original decision involved the exercise of discretion, the Objections Officer may find that the original decision was technically correct but that it was not the best exercise of the discretion. The Objections Officer must allow an objection in these circumstances and replace the decision with the preferable decision.

Example

F, the payer, makes a COA application to change the assessment because of the costs involved in enabling the parent to spend time with, or communicate with the child in the assessment. The SCO finds that this is a reason to change the assessment and that it is fair to reduce the annual rate by $500 per year. F objects because the SCO did not take into account significant medical costs for a relevant dependent child.

The Objections Officer considers the available information that is pertinent to the finding that F's relevant costs exceed 5% of the child support income amount. They agree with the SCO's finding that this is a reason to change the assessment. They provide M, the payee, with an opportunity to comment on the new information about F's medical costs for the relevant dependant child and further information from the child's treating specialist. The Objections Officer takes the new information and any information provided by the other parent into account when considering whether a change to the assessment would be fair and proper.

Review of an objection officer's decision

The objection decision

A parent cannot object to a decision made upon their objection, or the other parent's objection. A parent who disagrees with an objection decision (other than a decision to refuse to change an assessment because the matters are too complex) can make application to the SSAT for a review of the decision (See chapter 4.2).

Other decisions made by an Objections Officer

An Objections Officer can also be authorised to make decisions about other matters raised by the parents, which are not related to the objection. Any decision made by the Objections Officer, except the decision on the objection, is a new decision and either parent may object to the new decision. Another Objections Officer will make a decision on that subsequent objection.

Notifying parents of the decision

CSA must serve written notice of the objection decision on the parent who lodged the objection and on the

other parent if the other parent was entitled to be served a copy of the objection and accompanying documents (section 87(2)). The notice of decision must include a statement that the parent may apply to the SSAT for a review of the decision if they are dissatisfied with the outcome of the objection (section 87(3)).

If the Objections Officer refused to change a child support assessment because the issues involves are too complex the notice must state that the parents can apply to a court for an order departing from the assessment (section 87(3)).

The notice must include or be accompanied by the reasons for the decision (section 87(3)).

The reasons for decision will include:

- the Objections Officer's understanding of the relevant legislation;
- the findings of facts upon which their conclusions depend; and
- the reasoning process that led them to their conclusion.

Version 1.6

Issued 1 January 2008

< Previous Next >

4.1.4: What is a valid objection?

Context

A parent may ask CSA to reconsider particular decisions by making a valid objection.

Legislative References

Part VII *Child Support (Registration and Collection) Act 1988*

Regulations 14, 15 and 16 *Child Support (Registration and Collection) Regulations 2000*

Sections 160 and 163 *Evidence Act 1995*

Explanation

A valid objection must

- be about a decision for which there is an objection right under the Registration and Collection Act. This can be about a decision that was made under the Assessment Act or the Registration and Collection Act.
- be in writing from a parent aggrieved by the decision
- state fully and in detail the grounds relied upon
- be lodged within 28 days of the day that the parent received notice of the decision (or 90 days if the parent is a resident of a reciprocating jurisdiction).

In writing from a parent aggrieved

A valid objection must be in writing. CSA cannot act on a verbal request to reconsider the original decision. A written objection can be lodged with CSA by mail or email or be delivered personally by the parent or someone else on their behalf. If the parent resides in a reciprocating jurisdiction, the relevant overseas authority can object on his or her behalf (see chapter 1.6 Overseas cases).

CSA does not require an objection to be in any particular written form. Most objections are in the form of a letter addressed to CSA, or to the person named as the decision-maker in CSA's notice of decision. It is not necessary for the person to use the word 'objection' in their written objection, but they must ask CSA to reconsider its original decision.

A complaint about service provision or the legislation is not a valid objection. CSA's complaints policy applies to those cases (See chapter 6.9).

A parent must lodge their own objection unless it is made on their behalf by a solicitor or someone with power of attorney (including those with statutory rights to deal with the parent's finances including a State Protective Commissioner or the trustee of an estate).

A person who is otherwise authorised to act as a parent's representative by the customer may not lodge an objection on behalf of that customer unless the parent signs the objection.

State grounds fully and in detail

A person objecting to a decision must state the grounds they are relying upon *'fully and in detail'*. Parents should identify the decision and explain why they believe that the decision is wrong.

If an objection to a decision does not include any grounds, CSA will contact the parent who lodged it. CSA will discuss the basis for the original decision with the parent and explain that he or she needs to provide written grounds before CSA can reconsider the decision. CSA will invite the parent to lodge a further

objection if they wish to have the decision reconsidered.

Within 28 days (or 90 days for residents of reciprocating jurisdictions)

A valid objection to a decision must be lodged with CSA within 28 days of the day that the parent was served with written notice of that decision (section 81(1) of the Registration and Collection Act). If the decision is an appealable refusal collection decision, the payee may object to it within 28 days of the date he or she first became aware of it (section 81(2) of the Registration and Collection Act).

The period for lodging an objection to any decision is extended from 28 to 90 days for a parent who is resident overseas in a reciprocating jurisdiction while the other parent resides in Australia.

When deciding whether an objection has been lodged in time CSA will firstly calculate the date upon which the person was served with notice of the decision. CSA usually serves notices by pre-paid mail sent to the person at his or her last known address (regulation 14(1) Registration and Collection Regulations). A person is taken to have been served with notice by mail at the time when the letter would, in the ordinary course of the post, have arrived at the place to which it was addressed, unless proven otherwise (regulation 14(2) Registration and Collection Regulations). If the person has failed to advise CSA of a change to his or her address, the notice is taken to have been served despite it being sent to his or her former address (regulations 15 and 16, Registration and Collection Regulations).

CSA will presume that a notice has been posted to a person on the fifth business day after the date the notice was produced (section 163 of the Evidence Act). It will presume that the letter was received at the person's address in Australia on the fourth working day after that date it was presumed to have been posted (section 160 of the Evidence Act). This means that in most cases, a notice is presumed to have been served on a person on the ninth working day after the date of the notice (i.e. excluding any day that is a Saturday, Sunday, bank or public holiday). The only exceptions are where CSA is aware that the person received the notice within a shorter period, or where the notice is sent to a person at an overseas address. CSA may be aware that the person received the notice within a shorter period if a copy of the notice was sent to the person by facsimile at his or her request; or if the person contacted CSA before the ninth working day after the date of the notice to discuss it when he or she received it. If the notice was sent to the person at an overseas address, CSA will investigate the usual postage period for an ordinary mail article sent from Australia to that overseas address.

Once CSA has calculated the presumed (or actual) date of service of the notice, it will work it whether the person has lodged his or her objection within 28 calendar days of that date. The objection will be considered to be lodged within time if it is received by CSA by the 29th day after the date of service. If the 29th day is a Saturday, Sunday, bank or public holiday, the last day for lodgement is the following working day.

If the parent resides abroad in a reciprocating jurisdiction, CSA must calculate whether the person's objection was lodged within 90 days of the date of presumed (or actual) service. The objection will be considered to be lodged within time if it is received by CSA by the 91st day after the date of service. If the 91st day is a Saturday, Sunday, bank or public holiday, the last day for lodgement is the following working day.

If a parent has not objected within time they can lodge an objection with an application for an extension of time.

Version 1.6

Issued 27 July 2007

< Previous Next >

5.3.2: Offsetting debts between payees and payers

Context

CSA can offset the child support debts owed by two payers if CSA would be obliged to pay the amounts collected from one to the other.

Legislative References

Sections 17, 17A and 71AA *Child Support (Registration and Collection) Act 1988*

Explanation

CSA has a discretion to offset debts between two payers who each have a child support debt due to the Commonwealth if those debts arise under.

- a child support assessment (section 17(2));
- a liability to pay periodic child maintenance arising from a court order or court-registered maintenance agreement or a collection agency maintenance liability (section 17(1)); or
- a parentage overpayment order (section 17A) ; **not** a spousal maintenance liability).

If two child support debts are offset, the payer with the larger debt is required to pay the net amount to CSA. Debts can be offset by deducting the whole amount, or part of an amount, of the smaller debt from the larger debt.

CSA will take into account the circumstances of each individual case when considering whether to offset debts and determining how much to offset. CSA will negotiate with both customers and will aim to reach a mutually acceptable arrangement that takes into account the ongoing needs of the parent with care of the children and the past and present obligations of both parents to pay child support when due. If one of the debts arises from a parentage overpayment order, CSA will consider the terms of that order and in particular any repayment schedule specified in the order. CSA will confirm that the debts are accurate before commencing any negotiation.

What kinds of debts can be offset?

Only child support debts arising from a liability referred to in sections 17 and 17A of the Registration and Collection Act can be offset.. Debts due to spousal maintenance and penalties are not included.

In the case of amounts due under a child support assessment; child maintenance order ; court registered agreement, or a collection agency liability, CSA can only offset these if they relate to a child of whom both customers are the parents (section 71AA(1)(c)).

Where the debts are of equal amounts

If the debts are equal CSA may offset one against the other and the Commonwealth is taken to have recovered both of the debts in full (Sub-section 71AA(2)). In most cases where the debt is equal this is the desirable outcome.

Where the amounts owed are not equal

If CSA offsets debts for different amounts, then the Commonwealth is taken to have recovered the amount of the smaller debt that is offset and an equal amount of the larger debt (section 71AA(3)). Where the amounts are not equal it is desirable to offset the full amount of the smaller debt against an equal amount of the larger debt.

Offsetting a debt against an ongoing liability

Where CSA offsets unequal debts, the remaining amount of the larger debt is still a debt due to the Commonwealth. If the debtor with the larger debt is entitled to future child support payable by the other parent, CSA may offset the remaining debt against the parent's ongoing child support entitlement as it becomes due and payable each month.

CSA can offset the parent's debt against part or all of that parent's child support entitlement each month. Where the debt is offset in part, the balance of the month's child support liability is due and payable in the normal fashion. CSA officers will seek an offsetting arrangement that will not disadvantage the child(ren) by minimising ongoing child support and which also reflects the size of the debt and a reasonable repayment period

Effect of offsetting a debt

Any amount recovered by way of offset is taken to be paid by the payer to CSA and paid to the payee as provided for under the Registration and Collection Act (section 71AA(4)).

When a liability is later varied

Where CSA offsets a parent's child support debt (as payer) against that parent's entitlement to receive child support from the other parent (as payee) and their entitlement as payee is later reduced, the person will be required to repay the amount of the overpayment to CSA as if they had received the offset amount (section 79(1)).

Where a variation alters the basis of an offset arrangement affecting amounts to be offset in the future, CSA will reconsider those arrangements.

Notification

CSA will confirm any offset arrangements in writing with both parents. However, neither parent has the right to object against CSA's decision to offset, or refuse to offset, a debt.

Version 1.2

< Previous Next >

5.5.5: Overpayments

Context

Overpayments of child support occur when a payee has been paid child support to which they are not entitled, usually because CSA has made a retrospective variation to a child support assessment, or where a court makes an order or declaration with retrospective effect. The payer is entitled to take action against the payee to recover overpaid child support. CSA is also entitled to recover some overpayments from the payee.

Legislative References

Sections 30, 76 and 79 *Child Support (Registration and Collection) Act 1988*

Sections 107 and 143 *Child Support (Assessment) Act 1989*

Sections 44 and 47 *Financial Management and Accountability Act 1997*

Section 1228(2B) *Social Security Act 1991*

Explanation

Where CSA makes a retrospective amendment to a child support assessment, or gives effect to a court order or declaration with retrospective effect, this can result in a child support overpayment.

Although the Assessment Act minimises the circumstances in which overpayments occur (for example, assessments are only amended prospectively when a parent estimates their income, or when a parent notifies CSA of a change to the level of care of a child) overpayments do occur in the ordinary course of child support cases. It is important for CSA to deal with overpayments in a way that is consistent with the objects of both child support Acts and that is fair to both parents.

The *Financial Management and Accountability Act 1997* requires CSA to deal with Commonwealth revenue in an efficient, effective and ethical manner (section 44). It also requires CSA to pursue all relevant debts owed to the Commonwealth unless the debts are not legally recoverable or CSA considers that it would not be economical to pursue recovery of them (section 47).

There are two kinds of child support overpayments:

- overpayments where there is no registered maintenance liability (which are not debts the payee owes to the Commonwealth), and
- overpayments where there is a registered maintenance liability (which can be debts the payee owes to the Commonwealth).

Overpayments where there is no registered maintenance liability

There is no registered maintenance liability if a liability that was registered was never entitled to be registered.

When CSA receives applications to register liabilities or make child support assessments, provided all the requirements of the law are satisfied, CSA must register the liability or make the assessments. Sometimes other evidence or a subsequent court order requires that the registered liability be cancelled. In these circumstances, the liability was never entitled to be registered.

CSA cannot recover overpayments that occur when there is no registered maintenance liability because they are not debts due to the Commonwealth under section 79 of the Registration & Collection Act. A payer can take action to recover these overpayments from the payee in a court with family law jurisdiction. If child

support was payable under a child support assessment, the payer can make an application to the court under section 143 of the Assessment Act to recover child support from the payee. If the registrable maintenance liability arose under a court order or court-registered agreement the person may be able to take recovery action against the payee in the court that made the order or registered the agreement.

Example

> *A court makes a declaration under section 107 of the Assessment Act that F is not entitled to a child support assessment payable by M for child C. The effect of the court's declaration is that CSA is taken never to have made a child support assessment for C. F is taken never to have been the payee of a registered maintenance liability. The child support that CSA collected from M and paid to F is not a debt due by F to the Commonwealth under section 79 of the Registration & Collection Act.*

If the court makes a declaration that the payee was not entitled to an administrative assessment of child support for a child payable by a payer because the payer is not a parent of that child, the court is obliged to consider making an order for recovery of that overpayment (sections107(6), 107A and 143 of the Assessment Act). If the court orders the former payee (i.e. the payer of the order) to repay a specified sum to the former payer (i.e. the payee of the order), that parentage overpayment order can be registered with CSA for collection. Upon registration, the specified sum repayable by the payer of the order becomes a child support debt due to the Commonwealth under section 30 of the Registration & Collection Act. CSA can collect the specified sum for disbursement to the payee (i.e. the former payer). (See chapter 3.2.6 for more information about parentage overpayment orders). The administrative and other measures that CSA can use to collect the amounts owed under a registered parentage overpayment order are discussed in chapters 5.1 through to 5.4 of the Guide.

A payer (or former payer) is also entitled to apply to a court for an order under section 143 of the Assessment Act in any other situation where he or she has overpaid child support to the payee under a child support assessment. However, CSA can only register the order for collection if it is a parentage overpayment order requiring repayment of a specified sum.

If an overpayment occurs when there is no registered liability CSA will advise a payer that section 143 of the Assessment Act specifically provides for them to make an application to a court for recovery of child support paid where a liability no longer exists. The payer must name the payee as the respondent to their application, as the child support paid to CSA is taken to have been paid to the payee for the purposes of section 143 (section 143(4)). The court may make orders that are just and equitable in the circumstances to give effect to the rights of the parties and the child(ren). The court cannot make an order requiring CSA to repay the overpaid amount to the payer (*Child Support Registrar and Z and T* (2002) FamCa 182). *Mercer v the Child Support Agency* [2004] FCA 465).

Even if a payee is still a payee of a registered maintenance liability for other children in an assessment the overpayment that relates to the child/ren for which the section 107 declaration was made is not a debt to the Commonwealth that is recoverable from the payee under section 79 *(Mercer v the Child Support Agency* [2004] FCA 465).

The court may make whatever orders under section 143 of the Assessment Act as it considers are just and equitable in the circumstances to give effect to the rights of the parties and the child(ren) (section 143(3)). If the court is considering whether to make an order for the former payee to repay an overpayment arising from a declaration under section 107 of the Assessment Act, it must have regard to the matters listed in section 143(3B) of the Assessment Act. These include:

- whether the former payer or payee knew (or should reasonably have known) that the former payer was not a parent of the child;
- any conduct of the former payer and payee that led to CSA accepting the application;
- any delay by the former payer in making the application to court for a declaration under section 107 of the Assessment Act;
- whether child support is or will be payable for any other child of whom the former payer and payee are parents;
- the former payer's relationship with the child; and
- the former payer and payee's financial circumstances.

Retrospective variation after a terminating event

Where a registered maintenance liability exists and CSA is advised of a terminating event, CSA must vary the liability from the day the terminating event occurred. Although backdating a terminating event cancels part of the liability, it is not the same as cancelling a liability completely. Backdating a terminating event is a variation to a liability that is entitled to be registered. Any overpayment can be recovered by CSA from the payee under section 79 of the Registration & Collection Act.

Example

F is required to pay child support to M for the child C from 12 December 2002. On 7 October 2003, M notifies CSA that C left home on 15 August 2003. CSA varies the child support assessment by removing C from the assessment from 15 August 2003. M has received payments under 76 of the Registration & Collection Act which are repayable by CSA to F. CSA can recover from M under section 79.

Overpayments where there is a registered maintenance liability

There is a registered maintenance liability if, at any time, a liability was entitled to be registered. Overpayments that occur in relation to registered liabilities are debts due to the Commonwealth and are recoverable from the payee by CSA under section 79 of the Registration and Collection Act. For there to be an overpayment under section 79:

- there must be a registered maintenance liability,
- CSA must have paid a payee an amount that it collected in satisfaction of the liability (section 76) or be taken to have received an amount because CSA offset amounts between the payer and payee (section 71AA), and
- the payee was not entitled to be paid the amount **or** the amount is subsequently repayable to CSA because of a subsequent variation to the liability.

Examples

CSA makes a payment of child support to M after it intercepts F's tax refund. The ATO later advises CSA that the tax refund was for another taxpayer with the same name as F. M has received a payment under section 76 but was not entitled to be paid that amount. M has been overpaid and the overpayment is M's debt to the Commonwealth under section 79.

CSA receives a payment from F by cheque and makes a payment to M, the payee. F's cheque is later dishonoured. M has received a payment under section 76 but was not entitled to be paid the amount because CSA did not receive the amount from F. M has been overpaid and the overpayment is M's debt to the Commonwealth under section 79.

M has received payments of child support from CSA. M's entitlement is subsequently reduced because CSA allows F's objection about the level of care that F has. M has received an amount under section 76 which is now repayable by CSA to F. M has been overpaid and the overpayment is M's debt to the Commonwealth under section 79.

M's child support assessment has ended as all the children are over 18. CSA amends the assessment retrospectively by replacing a default income figure with M's taxable income as advised by the ATO. This amendment reduces the amount of child support that M was entitled to receive. M has received a payment under section 76 which is now repayable by CSA to F. M has been overpaid and the overpayment is M's debt to the Commonwealth under section 79.

CSA can amend an assessment in relation to the days in the child support period(s) before a terminating event even though the case has ended (See chapter 2.8 Making, amending and ending child support assessments). Any overpayment of child support arising from such an amendment is the payee's debt to the Commonwealth. Similarly, CSA can recover arrears from a payer where CSA amends an assessment in relation to the days in the child support period(s) before a terminating event and that amendment increases the amounts payable.

A payee does not owe a debt to the Commonwealth where CSA makes a payment using funds transferred from consolidated revenue for top up.

Recovery from payees

The administrative and other measures that CSA can use to collect a specified amount owed under a registered parentage overpayment order by a former payee (who is now the payer of the order) are

discussed in chapters 5.1 through to 5.4 of the Guide. **The remaining information in this chapter relates only to overpayments that are recoverable from the payee under section 79 of** the Registration & Collection Act.

If a payee's overpayment is a debt due to the Commonwealth under section 79 of the Registration & Collection Act, CSA will contact the payee to discuss payment in full or a negotiated payment arrangement.

Negotiated payment arrangements with payees

Any payment arrangement will take into account a payee's capacity to pay. CSA will explain how the overpayment occurred and the options available for repayment. Although the overpayment should be paid in a lump sum where possible, CSA will seek a payment arrangement that:

- reflects the payee's capacity to pay
- will not disadvantage the child(ren) by minimising ongoing child support
- reflects the size of the debt and a reasonable repayment period
- takes into account the circumstances surrounding the overpayment.

A payee can pay instalments directly to CSA.

If a payee does not agree to repay the amount owed, CSA has statutory powers to recover the debt by:

- withholding an amount, determined by CSA, from future payments of child support (section 79(2)), or
- arranging for Centrelink to withhold an amount from any Centrelink payments to a payee (section 1228(2B) *Social Security Act 1991)*.

CSA will take all necessary action to recover an overpayment from a payee.

CSA can recover overpayments in a court with a civil debt recovery jurisdiction. However CSA will not take legal action where an arrangement to pay has been made and the payee is complying with the arrangement. CSA will consider legal action if it has not been able to successfully recover an overpayment using its administrative powers.

Unlike a child support debt, a payee's overpayment can be extinguished by bankruptcy. Where a person who is overpaid is discharged from bankruptcy the overpayment becomes irrecoverable at law. (See chapter 5.1 CSA Collection)

From 1 January 2008, CSA can recover an overpayment from a payee's income tax refund under section 72 of the Registration and Collection Act. CSA cannot use a section 72A notice to recover an overpayment from a third party. (See chapter 5.2 Administrative Enforcement)

CSA may decide not to pursue a debt if it is uneconomical to pursue or is irrecoverable at law. (See chapter 5.1 CSA Collection)

Withholdings from future payments of child support

CSA can recover a payee's overpayment by withholding an amount from future payments of child support. However, CSA can only make further payments to the payee if the payer continues to make payments to CSA. In most cases, this means that the payee must have made a payment arrangement and the CSA must have refunded the overpaid amount to the payer. If no refund is made to the payer, the payee will not receive any further payments until the overpayment is fully absorbed by the ongoing entitlement.

Refunds to payers

CSA does not have authority to refund amounts overpaid to payers where the overpayment is not recoverable from the payee under section 79.

Even if the overpayment is recoverable from the payee under section 79, CSA is not obliged to refund amounts overpaid until the amount is recovered from a payee. CSA will not refund overpaid amounts to child support payers unless:

- it will further the objects of the Act, and
- the interests of the Commonwealth are protected, and
- the interest of the payee are taken into account.

Furthering the objects of the Act

One of the objects of the Act (See chapter 1.3 Objects of the scheme of the scheme) is to ensure that periodic payments of child support are paid 'on a regular and timely basis'. The Child Support Registrar must take this into account in exercising any discretion to refund amounts to payers.

Overpayments that are repayable by a payee under section 79 interrupt the regular and timely payment of child support unless the payee repays the overpaid amount immediately or enters into a suitable payment arrangement, allowing a refund to the payer. If no repayment or payment arrangement is made, the overpayment will be credited against ongoing maintenance until the credit is exhausted, meaning the payee will receive no payments until there is no overpayment left.

The interests of the Commonwealth

If the amount of overpayment is refunded to a payer (before recovery from the payee) the Commonwealth bears the cost until it recovers the amount from the payee. Whilst CSA has statutory powers to recover these debts, the debt may take years to recover or attempts to recover may be unsuccessful. CSA will generally not refund overpayments if it is unlikely to be able to recover the amount from the payee.

The interests of the payee

When an overpayment occurs a payee may be able to seek to have the liability increased to reduce the overpayment.

A payee may be able to:

- object to the decision that gave rise to the overpayment
- apply for a change of assessment
- make an application to the court for an increase in child support payable.

CSA will advise a payee of their rights to obtain a review of decisions that gave rise to an overpayment and the options open to them.

In some cases refunding an amount to a payer may affect the success of a payee's action to have the child support payable changed retrospectively. Decision-makers, such as Senior Case Officers and Judges, may take into account any hardship to a payer in repaying an amount once a refund has been made and may decide not to make a retrospective change (*Halge v Carroll* (1998) FLC 98-002). Even if a payee is successful in gaining an increase it may be difficult to recover lump sums already refunded to a payer, particularly if the payer has expended the amount on day-to-day living or on assets that cannot be liquidated easily. This may cause hardship for both parents.

Ongoing cases

In ongoing cases CSA will consider whether it is appropriate to refund amounts in order to continue regular and timely payments of child support. If the overpaid amount is refunded to the payer any further amounts received from the payer for the ongoing liability can be paid out to the payee under section 76.

To balance the interests of the Commonwealth and to promote regular and timely payment of child support CSA will refund amounts overpaid if all of the following conditions are met:

- the case is ongoing and likely to continue.
- the payer has a history of making full and regular payments and there are no new circumstances that indicate that this will change.
- CSA and the payee have negotiated an amount to be deducted from continuing payments of child support that will result in the overpayment being fully repaid before the case ends.
- the payee is not seeking to have the liability increased retrospectively.

Before making a decision CSA will examine the payer's payment history and ask parents if there are any changes in circumstances that may affect that record or lead to an early end to the case. CSA will also ask the payee if he or she is intending to take any action that could lead to a retrospective change to the child support payable.

Ended cases and ongoing cases where CSA decides not to refund

If a payee's ongoing entitlement to child support has ended, CSA will seek to recover the debt from the payee

and will refund any recovered amounts to the payer as and when they are received.

CSA will also seek to recover overpaid amounts from the payee in ongoing cases where it has decided not to refund overpaid amounts to the payer. CSA will refund any recovered amounts to the payer as and when they are received.

Where there is an ongoing entitlement but a suitable payment arrangement cannot be made with the payee, CSA will generally decide not to refund the overpayment but will offset the overpaid amount against the ongoing liabilities. The payer will not have to make further payments until the overpayment credit is exhausted.

Version 1.3

Issued 1 January 2008

< Previous Next >

1.6.1: Australia's international maintenance arrangements

Context

Arrangements commenced on 1 July 2000 that increased Australia's ability to give effect to its international obligations in relation to maintenance obligations arising from family relationship, parentage or marriage. The arrangements facilitated a change from court-based processes for overseas maintenance cases to predominantly administrative arrangements and transferred responsibility for most child support matters to the Child Support Agency.

Explanation

Arrangements commenced on 1 July 2000 which modified the operation of the Assessment Act and the Registration and Collection Act for cases where one parent resides abroad in a reciprocating jurisdiction while the other parent resides in Australia. The modifications were originally contained in Regulations for both acts but have since been incorporated into the primary legislation with effect from 19 July 2007.

The arrangements apply when the child lives with a parent in Australia and also when the child lives with a parent in a reciprocating jurisdiction.

The underpinning principle of Australia's international maintenance arrangements is that, wherever possible, a liability should be issued and administered in the jurisdiction where the payee resides. The jurisdiction in which the payer is resident is responsible for collection and providing the payer with reasonable assistance in dealing with the overseas authority.

Summary of the arrangements

CSA can:

- make and continue a child support assessment where the payer is overseas in a reciprocating jurisdiction
- accept an application for assessment from a payee or payer overseas when transmitted through the overseas Central Authority
- accept an application for assessment from an overseas Central Authority applying on behalf of a payee in a reciprocating jurisdiction
- accept an application for assessment made directly by the payer who is a resident of a reciprocating jurisdiction
- register and enforce an overseas maintenance assessment
- register and enforce an overseas maintenance order
- register and enforce an overseas 'agency reimbursement liability'
- register and enforce an overseas maintenance agreement
- register and enforce arrears that have accumulated under an overseas maintenance liability
- transmit an application for review/variation of a liability made in an overseas country; and
- assist overseas authorities with location and service requests for parents in Australia.

Reciprocating jurisdictions

Reciprocating jurisdictions are listed in schedule 2 of the Registration and Collection Regulations.

- Algeria
- Argentina
- Austria

- Barbados
- Bosnia and Herzegovina
- Burkina Faso
- Belarus
- Brazil
- Canada, the following Provinces and Territories:
- Belgium
- Brunei Darussalam*
- Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon*
- Cape Verde
- Colombia
- Cyprus
- Ecuador
- Finland
- Greece
- Holy See, The
- India
- Italy
- Kyrgyzstan
- Luxembourg
- Malta
- Monaco
- Nauru
- Niger
- Pakistan
- Poland
- Samoa*
- Sierra Leone
- Slovenia
- Sri Lanka
- Switzerland
- Tunisia
- United Kingdom (including Alderney, Gibraltar, Guernsey, Isle of Man, Jersey and Sark)
- Central African Republic
- Cook Islands*
- Czech Republic
- Estonia
- Former Yugoslav Republic of Macedonia
- Guatemala
- Hong Kong
- Ireland
- Kazakhstan
- Liberia
- Malawi
- Mexico
- Montenegro
- Netherlands
- Niue*
- Papua New Guinea*
- Portugal
- Serbia
- Singapore
- South Africa
- Suriname
- Tanzania (excluding Zanzibar)
- Turkey
- United States of America
- Zambia
- Chile
- Croatia
- Denmark
- Fiji
- France
- Germany
- Haiti
- Hungary
- Israel*
- Kenya
- Lithuania
- Malaysia
- Moldova
- Morocco
- New Zealand
- Norway
- Philippines
- Romania
- Seychelles
- Slovakia
- Spain
- Sweden
- Trinidad and Tobago
- Ukraine
- Uruguay
- Zimbabwe

*These are excluded jurisdictions for the purposes of CSA making or continuing a child support assessment where the payee is in Australia but the payer resides in that jurisdiction. A court order under the Family Law Act is still required.

Overseas authority/central authority

An overseas authority is the judicial or administrative authority in each reciprocating jurisdiction responsible for implementing an overseas agreement or arrangement with Australia for maintenance obligations.

CSA is the central authority in Australia for most overseas child support and spousal maintenance matters.

Frequently asked questions

What assistance does CSA provide parents where the liability is administered overseas?

CSA provides assistance to the relevant overseas authority, as required (e.g. customer location, service of notices, and collecting the liability). CSA will direct enquiries about the administrative issues for an overseas liability to the overseas authority that issued the liability. CSA can also assist an Australian parent by transmitting any notifications or objections.

Why are some reciprocating jurisdictions treated differently?

CSA can't make or continue a child support assessment payable by a payer in Brunei Darussalam, Cook Islands, Israel, Niue, Papua New Guinea, the Yukon Territory of Canada and Samoa (previously Western Samoa) despite those countries being reciprocating jurisdictions. These countries have formally advised that under their laws, they can only commence maintenance proceedings on the basis of a court order.

Version 1.4

Issued 27 July 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.5.4: Suspending payments to payees

Context

If a payer applies to a court for a declaration that the payee is not entitled to an assessment of child support for a child because the payer is not a parent of the child concerned, CSA must suspend payments to the payee while the court considers the application.

CSA has discretion to suspend payments to the payee while it considers the payer's objection to the validity of a child support assessment for reasons other than the parentage of the child concerned. CSA may also exercise this discretion to suspend payments to the payee while a court or the Social Security Appeals Tribunal considers a payer's application in proceedings challenging the validity of the child support assessment for reasons other than the parentage of the child concerned.

Legislative References

Sections 80, 107, 107A and Subdivision B of Division 3 of Part VIII (court review) *Child Support (Assessment) Act 1989*

Sections 79A and 79B *Child Support (Registration and Collection) Act 1988*

Rule 4.23 *Family Law Rules 2004*

Explanation

Suspension determination pending a payer's application to court about parentage

A payer can apply to a court for a declaration that the payee is not entitled to an assessment of child support payable by them for a child because he or she is not a parent of that child (a declaration under section 107 or section 107A of the Assessment Act) (See chapter 4.3). A payer must serve a copy of their application for a section 107 or section 107A declaration upon CSA (Rule 4.23 *Family Law Rules 2004*).

Unless the court grants a stay order, the payer is obliged to continue making child support payments for the child pending the court's decision. However, when CSA is notified about the payer's application to court for a declaration under section 107 or section 107A for a child, CSA is obliged to suspend payments to the payee for that child (section 79A of the Registration & Collection Act).

While the suspension remains in force, CSA will not disburse to the payee any payments that it receives from the payer for the child who is the subject of the payer's application. CSA will hold these payments in credit on the payer's account. CSA will continue to disburse to the payee any amounts that relate to any other child (or children) for whom the payer is liable to pay child support.

Example

> M has a child support assessment for 2 children, A and B, payable to F. M applies to a court for a section 107 declaration in relation to child support payable for B. CSA makes a suspension determination that results in it paying to F 2/3 of the child support it receives from M, and holding 1/3 of the amount in the Reserve. This proportion is calculated by comparing the child support percentage payable for 1 child (18%) with the child support percentage payable for 2 children (27%) (i.e. 18/27 = 2/3).

CSA cannot make a 'partial' suspension determination. CSA must hold all child support for the child subject to the section 107 or section 107A application when it makes a suspension determination.

Suspension determination pending a payer's objection or application to court about the validity of the assessment on other grounds (i.e., not parentage)

CSA may make a suspension determination if a payer objects to the validity of CSA's assessment on any of the following grounds (section 79B(1)(a) of the Registration & Collection Act):

- that the child was not a child for whom an application for an administrative assessment of child support was entitled to be made;
- that the applicant was not a person entitled to make an application for the child; or
- that the payer was not a resident of Australia.

CSA may also make a suspension determination if the payer has applied to a court for review of a decision made by the Social Security Appeal Tribunal in relation to the payee's entitlement to an administrative assessment of child support for a child (section 79B(1)(b)).

CSA will consider making a suspension determination in a case where the payer has objected or applied to a court about the validity of the assessment on a ground other than parentage only when requested to do so by the payer. In deciding whether a suspension determination is appropriate, CSA will take into account:

- the merit of the payer's objection or application;
- the particular circumstances of the individual case (including the interests of the payer, the payee and the child for whom child support is payable); and
- the objects of the Registration and Collection Act,.

Resumption determinations

Once CSA has made a suspension determination, it can resume payments to the payee for the child by making a resumption determination.

CSA is obliged to make a resumption determination when:

- a court has finally refused the payer's application), or
- the payer withdraws their court application, or
- the court has struck out or dismissed the payer's application.
  (section 79A(3) of the Registration & Collection Act in the case of an application for a declaration under section 107 of the Assessment Act; or section 79B(3) for an application to court for review of a decision made by the Social Security Appeal Tribunal in relation to the payee's entitlement to an administrative assessment of child support for a child).

CSA has discretion to make a resumption determination in circumstances other than those set out above. It will consider doing so only when requested to do so by the payee. In deciding whether a resumption determination is appropriate in circumstances other than those set out above, CSA will take into account:

- the merit of the payer's objection or application;
- the particular circumstances of the individual case (including the interests of the payer, the payee and the child for whom child support is payable); and
- the objects of the Registration and Collection Act,.

When CSA makes a resumption determination, it must pay to the payee any child support retained as a result of the suspension (sections 79A(3)(d) or 79B(3)(d) of the Registration & Collection Act). The particulars of the Child Support Register must be varied to give effect to the resumption determination (section 79C(2) of the Registration & Collection Act).

When a court's refusal become final

CSA is obliged to make a resumption determination when a court has finally refused the payer's application.

A decision of a court is final if an appeal is not made within the time for doing so, or in the case of a decision of the Full Court of the Family Court, no application for special leave to appeal to the High Court has been made within 30 days of the decision. (section 144 of the Assessment Act in the case of an application for a declaration under section 107 of the Assessment Act; or section 110W of the Registration & Collection Act for an application to court for review of a decision made by the Social Security Appeal Tribunal in relation to the payee's entitlement to an administrative assessment of child support for a child).

Notification

CSA will provide written notice to the payer and payee when it:

- makes a suspension determination and
- when it makes a resumption determination.

CSA will include information in the notice about each parent's right to object to that decision.

Objection rights

CSA must vary the particulars of the child support register when it makes a suspension determination or a resumption determination (section 79C of the Registration & Collection Act. A parent can object to either of these decisions. (See chapter 4.1 Objections)

A parent cannot object to CSA deciding not to make a suspension determination or a resumption determination as these are not appealable refusal decisions (section 4(1) of the Registration & Collection Act). The payer can apply to court for a stay order if CSA has refused to make a suspension determination. (See chapter 4.3.2 for a stay order pending a court decision on a payer's application for a declaration under section 107 of the Assessment Act; and chapter 4.3.6 for information about stay orders pending review of a decision made by the Social Security Appeal Tribunal in relation to the payee's entitlement to an administrative assessment of child support for a child.)

If CSA allows a payee's objection to CSA's suspension determination, the suspension determination is considered never to have been made. It is not necessary for CSA to make a formal resumption determination. It will simply vary the Register to give effect to the objection decision.

Version 1.3

Issued 1 January 2008

< Previous Next >

3.2.6: Parentage overpayment orders

Context

A court may make an order under section 143 of the *Child Support (Assessment) Act 1989* requiring a former payee to repay to a former payer a specified amount of child support for a child of whom the former payer is not the parent.

Legislative reference

Sections 107, 107A and 143 *Child Support (Assessment) Act 1989*.

Section 17A *Child Support (Registration and Collection) Act 1988*

Explanation

Orders for repayment of overpaid child support assessments

Section 143 of the *Child Support (Assessment) Act 1989 (the Assessment Act)* gives a court discretion to make an order for recovery of an overpayment of a child support assessment. The court may make such orders as it considers just and equitable to give effect to, or to adjust, the rights of the payer and payee concerned.

Section 143 is not limited to particular types of overpayment. A payer can apply for an order under section 143 to recover any overpayment of child support arising under the Assessment Act. However, this creates a registrable maintenance liability only if the overpayment is a parentage overpayment and the court orders the former payee to repay an amount to the former payer (section 17A of the *Child Support (Registration and Collection) Act* 1988). The payer in whose favour the order is made (the former payer, is now the payee of the parentage overpayment order) can register the order with CSA for collection. However, this does not extend to costs orders in respect of section 143 proceedings which are not able to be registered with CSA for collection (section 17A(2) of the *Child Support (Registration and Collection) Act 1988).*

Parentage overpayment orders

A parent can apply to a court under section 107 or section 107A of the Assessment Act for a declaration that he or she is not a parent of a child for whom he or she is liable to pay child support. If the court is satisfied that the carer parent or liable parent is not the child's parent, it may grant the declaration (section 107(4) and section 107A(5)). Once a declaration is made, CSA is taken never to have accepted the application for child support for the child (section 107(5) and section 107A(6)).

Section 107(6) and section 107A(7) of the Assessment Act say that the court must consider making an order under section 143 of the Assessment Act for recovery of any overpaid child support as soon as practicable after making a declaration under section 107 or section 107A of the Assessment Act.

If the court makes a section 143 order requiring the former payee to repay an amount (i.e. a specified sum of money) to the former payer following a section 107 or section 107A declaration, this is a parentage overpayment order. CSA can register the order and recover from the former payee (who is now the payer under the order) the amount the court has ordered him or her to repay to the former payer (who is now the payee under the order).

If a court makes an order under section 143 requiring the former payee to transfer property to the former payer, rather than a specified sum of money) this is not a registrable maintenance liability. CSA cannot register such an order for collection and the former payer (now the payee of the order) will need to take his or her own enforcement action.

Version 1.2

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.2.1: Arrangements for payment

Context

CSA can make arrangements with a person who owes a debt to CSA to pay the debt in full, or in instalments. CSA will consider the circumstances of the particular case when coming to an arrangement for payment by instalments.

Legislative References

Financial Management and Accountability Act 1997

Explanation

The Secretary of the Department of Human Services (DHS) has issued Chief Executive Instructions under the *Financial Management and Accountability Act 1997*. The CEIs authorise CSA to arrange for a debtor to pay a debt by instalments.

Arriving at a negotiated payment arrangement can be a useful first step in the enforcement process. It is often a more efficient way to assist a customer to meet their child support obligations than other methods of administrative enforcement.

The nature of an arrangement will differ depending on the circumstances of the case. In making a payment arrangement CSA will keep in mind:

- the amount outstanding,
- the time it will take to repay the debt,
- the need to have the debt paid in the shortest possible time,
- the debtor's ability to pay the debt in a lump sum,
- whether it would be more effective and quicker for the debtor to borrow and/or sell assets in order to pay the debt,
- the effect of the arrears on the child(ren) who would benefit from payment,
- the protected earnings amount (if a payer is employed), and
- the need to ensure that any amount deducted is not so high that a payer sees it as more attractive to leave that employment (if a payer is employed).

An arrangement may include the following features:

- an agreement to pay the debt off in regular instalments,
- an agreement on the date the debt will be satisfied in full,
- an acknowledgment that if the customer's circumstances change, either the debt will be repaid in full or another repayment arrangement will be entered into to repay the debt more quickly,
- an acknowledgment that if a tax refund becomes available during the period of the arrangement, it may be applied to the debt,
- an acknowledgment that any failure to comply with the arrangement without reasonable excuse will mean that the debt is repayable in full at that time.

Version 1.1

Issued 23 January 2008

< Previous Next >

3.2.4: Periodic amounts payable to the payee

Context

A registrable maintenance liability must be either a liability to pay a periodic amount of maintenance for a child or a spouse, or a parentage overpayment order. The payee of a registrable maintenance liability is the person who would be entitled to collect the payments under the order if the liability were not registered with CSA for collection.

This chapter discusses liabilities to pay periodic maintenance to a payee. See chapter 3.2.6 for a discussion of registrable maintenance liabilities that are parentage overpayment orders.

Legislative reference

Sections 4, 17, 17A, 18 and 30 *Child Support (Registration and Collection) Act 1988*

Explanation

Payee of a registrable maintenance liability

A court order or court-registered agreement for maintenance creates a liability for one person (the payer) to provide financial support to another person (the payee). The terms of the order or agreement will make it clear who is entitled to the payments under that order or agreement. The payee of a child maintenance order will usually be the parent or other person providing ongoing daily care for the child, or the child. The payee of a spousal maintenance order will usually be the spouse, or former spouse of the payer.

Amounts payable to the payee

A registrable maintenance liability must be in the form of periodic payments payable to the payee or a parentage overpayment order. An order may specify that payments be made to the payee's bank account and occasionally to a third party acting for the payee, such as a solicitor or trustee.

Example

'M is to pay F spousal maintenance of $120 per week. Such payment is to be deposited to F's account with the XXX Bank.'

'F is to pay M child maintenance for their child A in the amount of $74 per week, by depositing said amount into a trust account for A under F and M's joint control.'

A provision in a court order that specifies how child support is to be paid to the payee does not prevent CSA from registering the order. When CSA registers the liability, the amounts payable under the order become debts due to the Commonwealth (section 30). Once an order is registered with CSA for collection, the provisions of section 30 override any payment instructions in the order. Amounts payable under the order are payable to CSA in accordance with the particulars of the Child Support Register. CSA then transfers collected amounts to the payee.

Amounts that are not payable to the payee

A court order or court registered maintenance agreement that requires the payer to make payments to a third party on behalf of the payee is not a registrable maintenance liability.

Example

'F is to pay $850 per month to the Territories Bank in satisfaction of M's mortgage repayments, the first such payment to be made on 15 September.'

'M is to make contributions at the family rate to Allied Health Insurance for F and the children A and B.'

'F is responsible for payment of all fees associated with A's attendance at the Valley School until A completes secondary schooling.'

Periodic amounts

A periodic amount is an amount to be paid at a weekly, monthly, annual or other periodic interval (section 4 Registration and Collection Act). A periodic amount is expressed in terms that require payments of a regular amount on a recurring or cyclical basis.

These clauses clearly state periodic amounts:

- $200 for each fortnight
- $1,000 every 6 months
- $400 each quarter

A clause with instructions about varying a stated periodic amount is also acceptable:

- '$50 per week but subject to adjustment to reflect changes in the Consumer Price Index (CPI)'.

An order or court-registered agreement for a periodic amount does not have to specify the actual dollar amount of payment. CSA can give effect to an order or court-registered agreement that contains terms which would enable CSA to readily calculate an amount that will be unchanged for a reasonable period of time and paid on a recurring basis.

> Orders applying the assessment formula can give rise to a periodic amount. See chapter 3.5 Interpreting Orders under the Family Law Act for more information.

Orders or agreements which require the payer to make payments to the payee that are equivalent to the payee's mortgage or rent payments, house rates, health insurance or school fees are orders for periodic amounts. These are recurring payments at fixed amount that may vary according to changes in interest rates or when premiums increase. However, where an order or agreement requires the payer to meet these payments directly, the payee is not entitled to payments under the order, so they do not give rise to a registrable maintenance liability.

Parentage overpayment orders

Parentage maintenance orders are discussed in chapter 3.2.6.

Version 1.1

Issued 1 January 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.3.5: Proof of identity

Context

Proof of identity checks help CSA comply with the privacy and secrecy provisions.

Explanation

CSA requires proof of identity from its customers and their authorised representatives to avoid the possibility of disclosing protected information to a person who is not entitled to receive it.

CSA's proof of identity requirements are based on the following principles.

- All personal information is equally important, protected and private.
- Identifying information that would be known to a person other than the customer is not sufficient on its own and must be accompanied by additional information.
- It is harder to identify someone on the telephone, so telephone identification procedures need to be precise.

CSA cannot require a person to provide their TFN. However, in the absence of a TFN or other information sufficient to prove a caller's identity, CSA may not be satisfied that the caller is the customer. A reference number (TFN, case number or Centrelink reference number) isn't mandatory but enables prompt identification. The proof of identity process may take longer without a reference number.

Inability to prove identity or authority

CSA does not need to establish the identity of a person before providing general information to them (e.g. information about the child support scheme, or the methods CSA uses to collect child support). However, CSA will not provide personal or protected information to a person if it cannot establish their identity.

If a person cannot provide sufficient proof of identity, CSA officer will explain that CSA has an obligation to protect the privacy of its customers and they cannot disclose or discuss any protected information to that person. As an alternative, the officer CSA may:

- in the case of a telephone call, confirm the person's identity by returning the call to the telephone number held on CSA's records or telephone book, or
- send details specific to a parent's affairs to the parent's postal address.

If CSA cannot verify that a third party is acting with a parent's authority, it may provide the required information by telephoning or writing to the customer.

CSA tries to provide a high level of service to all CSA customers, this includes protecting the privacy and security of customer information. Every effort is made to assist a person who contacts CSA. However CSA may not be able to provide the assistance sought immediately if CSA cannot be satisfied of the person's identity at that time.

Proof of identity for CSA customers

When speaking with customers (either in person or by telephone) CSA will ask for the customer's name and date of birth or reference number (TFN, case number or Centrelink reference number) in order to access that customer's details. The CSA officer will also ask some questions to verify the person's identity before providing protected or personal information about their case.

Issued 27 August 2002

< Previous Next >

6.3.7: Restricted access customers

Context

All child support customers are provided with a level of privacy and secrecy in relation to their personal information. However, in certain circumstances CSA will provide an additional level of protection to customer information.

Legislative references

Section 150 *Child Support (Assessment) Act 1989*

Section 16 *Child Support (Registration and Collection) Act 1988*

Privacy Act 1988

Explanation

Allocation of RACS status

CSA's usual procedures are sufficient to protect the personal information of most of its customers. In some cases, however, an additional level of protection is warranted. CSA has arrangements to limit access to information about a customer where the unauthorised disclosure of, or access to, that customer's information could:

- cause personal harm;
- have a negative effect on customers who, by virtue of their profile in the community:
- generate a high level of interest in their personal affairs;
- have a significant negative effect on community confidence in CSA;
- have a negative effect on CSA's business outcomes.

CSA will consider all relevant information when deciding if it is appropriate to classify customer information as restricted (RACS). This would include whether a customer has specifically asked for special protection, and any special protection that other government agencies have provided for that customer's information.

Administration and customer access

The classification of customer information as RACS means that information on file is placed under higher security. Information held is reclassified limiting the number of CSA officers who can access the information.

CSA appoints a limited number of staff to administer RACS information. This then means that customers classified as RACS may experience some short delays in having CSA respond to telephone and written enquiries.

Version 1.4

Issued 23 January 2008

< Previous Next >

5.6.3: Reapplying for collection

Context

A payee can apply for collection to resume after CSA has stopped enforcing a registered maintenance liability.

Legislative References

Sections 39 and 39A *Child Support (Registration and Collection) Act 1988*

Regulation 5C *Child Support (Registration and Collection) Regulations 1988*

Explanation

If CSA ends collection because the payer had a satisfactory payment record, or because the payee elected to end CSA collection, the payee can later reapply for CSA collection (section 39). The payee can make their application in writing, by telephone, in person, or electronically by completing a form on the CSA's website www.csa.gov.au (section 39(2)). The payee can also apply for CSA to collect arrears for them (section 39A(4)).

A payee cannot make an application for collection to resume during a low-income non-enforcement period (section 39(3)).

Unlike an application for registration, CSA is not obliged to accept the payee's application for collection to resume. CSA can grant or refuse the payee's application and must do so within 28 days of receiving it (section 39(4)).

CSA must grant the application if (section 39(5)):

- the payer has an unsatisfactory payment record, or
- there are special circumstances in the case that make it appropriate for CSA to collect the amounts

CSA will refuse the application in other circumstances.

If CSA accepts the payee's application it must vary the Register by specifying a date that the liability again becomes enforceable, which can't be more than 60 days after CSA received the application for collection (section 39(6)). Nor can it be a day included in a low-income non-enforcement period (section 39(7)).

CSA will usually determine that the liability is first enforceable from the date it received the payee's application for collection to resume. It may sometimes be appropriate to make the liability enforceable from a later day, for example if the payee has already received payments that cover a period after that date.

If the payee made their application by lodging a form at a Centrelink or Family Assistance office, CSA will accept this as the date that it received the payee's application.

When CSA accepts a payee's application to resume collection, CSA can also collect unpaid amounts for specified arrears period.

Unsatisfactory payment record

Except in particular circumstances, a payer has an unsatisfactory payment record if they did not pay the maintenance liability when it was due (regulation 5C(1)). In determining whether there is an unsatisfactory payment record CSA will examine the evidence provided by both parties such as bank statements, automatic transfer of payments, cheque butts and written statements.

A payment will not be considered late if the payer has made a payment of a kind prescribed in regulation 5D that would be credited against the ongoing liability if the case was registered for collection and the payment was sufficient to meet the liability (section 39A(8)). The payer must have paid 70% of the ongoing liability directly to the payee by the date it was due. CSA will give both parties the opportunity to make statements and provide evidence about whether the payments have been made.

The payer will not have an unsatisfactory payment record if they made any payment late because of circumstances outside of the payer's control. The payment must have been made as soon as possible (regulation 5C(2)). Examples of where a payment is late because of circumstances outside of his or her control may include:

- bank errors, employer errors or postal delays;
- failure to receive notification of the requirement to pay directly to the payee;
- failure to understand the notification because of poor English language skills or illiteracy;
- the payee failed to provide details to enable the payer to make payments direct to him or her;
- a serious illness or accident of the payer or someone close to them prevented the payer from making the payment;
- natural disasters meant that the payment could not be made.

The payer will not have an unsatisfactory payment record if the payment was late because of circumstances within the payer's control and the payer has taken some action to ensure that this does not happen again. The payer must have made the payment as soon as possible (regulation 5C(2)). This may occur when:

- a payer is mistaken as to the date the payment is due and payable (due dates may be different when the case is privately collected);
- arrears arise because of a retrospective change to the liability and the payer has complied with an agreement with the payee to pay off those arrears over time. The payee is entitled to payment on due dates and may request payment of all arrears at any time despite such an agreement. However, if the payer has been paying arrears as agreed with the payee and makes full payment at the request of the payee then they will not have an unsatisfactory payment record;
- personal trauma causing severe stress or hardship (such as a death in the payer's family or a natural disaster that damages a payer's home) may diminish the relative importance of meeting their maintenance obligation. If a payment is late in these circumstances the payer will not have an unsatisfactory payment record, particularly if they make arrangements for automatic transfer of the maintenance liability for the future from a bank account or from their employer;
- the payer forgot to make a payment and has made arrangements so that this does not happen again. This will usually mean that the payer arranged for automatic transfer of the maintenance liability from their bank or employer; or
- the payer made a payment by cheque that was later dishonoured and has made arrangements so that this does not happen again. This will usually mean that the payer has arranged for automatic transfer of amounts owing from their bank or employer.

Special circumstances that make CSA collection appropriate

CSA will accept the application even though the payer has a satisfactory payment record if there are special circumstances in the case which make CSA collection appropriate (section 39(5)(b)). CSA collection may be appropriate if there are difficulties in the relationship between the parents or between the payer and the children that may make private collection difficult to sustain.

When the payee applies for CSA collection they should supply the reason they believe their circumstances are special such that their application for CSA collection should not be refused. CSA will give the payer an opportunity to comment on the reason the payee has given for their application for CSA collection. CSA will then make a decision based on the information and evidence provided by both parties.

Collection of arrears if CSA accepts payee's application for collection to resume

A payee who applies for collection to resume can also apply for CSA to collect arrears for them (section 39A(4)). If CSA accepts the payee's election for collection to resume, it must also accept their application for collection of amounts the payer has not paid in the three months immediately before the date the liability first becomes enforceable by CSA. CSA will need to be satisfied that the amounts have actually not been paid.

A payee may also apply for collection of amounts unpaid by the payer for nine months before the liability first becomes enforceable by CSA. This is called the maximum arrears period. If there are amounts unpaid for this period and CSA is satisfied that there are exceptional circumstances it must grant the application.

If CSA grants the payee's application the unpaid amounts become a child support debt and CSA will vary the Register to show that the payer owes these unpaid amounts.

Exceptional circumstances

Whether circumstances are exceptional will depend on the facts in each particular case. The circumstances must be somehow unusual. They may be circumstances beyond the control of the payee that prevented them from applying for collection within a reasonable period. CSA will consider the effect of the particular circumstances on the payee and the extent to which those circumstances contributed to the payee's delay in re-applying for collection.

The following are examples of circumstances that CSA may consider exceptional. This is not an exhaustive list and each case must be considered on its merits.

- The payer threatened or pressured the payee not to apply for registration for CSA collection (See Chapter 6.10 Family violence).
- The payee was ill or had an accident that stopped them for applying for collection.
- The payee suffered a personal trauma such as a death in the family or a natural disaster that caused damage to the payee's property.
- The payee had communication difficulties because of including isolation, illiteracy or poor English language skills.
- The payer created a false expectation of payment (e.g. they promised to pay a lump sum from the proceeds of the sale of property or a compensation settlement).
- The parents were involved in negotiations over child support and/or other matters and applying for collection may have compromised those negotiations.

In some cases payees may apply for collection after CSA amends a child support assessment retrospectively so that there are significant arrears arising (for example, it may replace a default income or reconcile an estimate of income). These arrears arise through the ordinary operation of the Act and are not an exceptional circumstance even if the payee was unaware of any change in the payer's circumstances.

Evidence to show exceptional circumstances

The payee must provide suitable evidence for CSA to find there are exceptional circumstances. For example, if the payee states that the payer threatened or pressured them they may provide evidence from a person fully aware of the nature and details of the circumstances such as a doctor, social welfare worker or police officer.

In the case of illness, accident or psychiatric condition, the payee should provide written confirmation from a medical practitioner. In other cases, the payee must supply a full and detailed explanation supported by appropriate evidence.

CSA must provide the payer with an opportunity to comment on information the payee provided to CSA if it is taking it into account to make a decision to grant an application for a maximum arrears period.

Calculating amounts unpaid

In some cases parents provide conflicting information about payments made during the relevant arrears period. CSA will make reasonable investigations, including interviewing customers (by phone or in person) to find details of any payment dates and amounts. It will also take into account any evidence of amounts transferred from the payer to the payee, such as bank records or receipts signed by the payee. It may also decide whether amounts paid during the period were paid for periods in advance or in arrears.

For CSA to make the decision to collect child support arrears CSA has to be satisfied that the amount was unpaid. To do this it will examine the evidence provided by both parties in relation to the payment. If there is no evidence of payment then CSA cannot be satisfied the disputed amount was paid. The disputed amount will be included in CSA's calculation as an unpaid amount.

CSA will take into account any amounts that the payer has previously paid that would qualify as a prescribed

non-agency payment (See Chapter 5.3 Non-agency payments and offsetting liabilities) when calculating the amounts unpaid. If the payer has paid 70% of the liability directly to the payee, CSA will credit towards the remaining 30% of the liability any further amounts that would qualify as prescribed non-agency payments.

Version 1.3

< Previous Next >

2.8.6: Terminating events

Context

CSA must end a child support assessment if a 'terminating event' happens.

Legislative References

Sections 5,12, 22, 54, 74, 151 and 151C *Child Support (Assessment) Act 1989*

Regulation 4 *Child Support (Assessment) Regulations 1989*

Regulation 6 *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*

Explanation

The various 'terminating events' are listed in section 12 of the Assessment Act. CSA must end an assessment to take into account a terminating event (section 74).

In relation to a child, a terminating event happens if the child:

- dies;
- ceases to be an eligible child under a child welfare law (section 22 and regulation 4);
- turns 18 (unless CSA has accepted an application for the assessment to continue after a child turns 18);
- is adopted;
- becomes a member of a couple (living with a person of the opposite sex on a genuine domestic basis or with someone they are legally married to, section 4(1)); or
- is no longer present in Australia, an Australian citizen, or ordinarily resident in Australia (except where Australia's international maintenance arrangements apply). (See chapter 1.6 Overseas cases)

In relation to a carer, a terminating event happens if the carer:

- dies; or
- ceases to be an eligible carer (section 5).

In relation to a liable parent, a terminating event happens if the liable parent:

- dies; or
- ceases to be a resident of Australia (except where Australia's international maintenance arrangements apply).

In relation to a child and the parents (in relation to that child) a terminating event happens on a specified day if:

- the carer makes an election to end an assessment for the child from a specified day (section 151); or
- CSA has accepted an agreement in relation to the child in which the parents agreed that the liability to pay child support is to end from a specified day (See chapter 2.5).

Date of effect of a terminating event

CSA must end an assessment from the date of the terminating event, regardless of the date that CSA was notified of the terminating event (section 74).

Date of effect of a terminating event in relation to the care of a child

A child support assessment must end if a parent entitled to receive child support for a child ceases to be an eligible carer of that child (section 12(2)). A parent ceases to be an eligible carer when they cease to provide ongoing daily care for a child, or where the ongoing daily care that they provide amounts to less than 30% of the nights in the first 12 months of a child support period. CSA will end the child support assessment for that child from the date the parent ceases to be an eligible carer.

Example

M has a child support assessment payable by F on the basis that M has sole care of A. A goes to live with F and F applies for a child support assessment payable by M. As F now has sole care of A, CSA ends M's child support assessment from the day A left M's care.

In some cases the actual date may be difficult to determine, because the parents both believed that contact would occur in a particular way, which did not eventuate. If so, CSA will end the assessment for the child from the day in the first 12 months of the child support period beyond which it was not possible for the parent have substantial contact with the child.

Example

M and F are A's parents. M is liable to pay child support to F on the basis that F has substantial contact with A, and M has major contact. The child support period ends on 30 November 2005. M contacts CSA on 23 August 2005 and advises that A has only stayed with F for 60 nights since the start of the child support period (1 September 2004). F confirms the information.

CSA decides that F ceased to be an eligible carer on 14 July 2005, which is 49 days before the end of the first 12 months of the child support period. Even if A spent every remaining night with M from that date, this would not add up to 110 nights (30%) in the first 12 months of the child support period.

Reconciliation is not a terminating event

A payee doesn't cease to be an eligible carer (section 5) if parents reconcile. Where parents reconcile both parents are principal providers of ongoing daily care for the child/ren. *(Rocca v Corelli* (1998) FLC 92-794).

Where parents are satisfied that they have genuinely reconciled, the payee, or carer, can elect to end the assessment. See 'Electing to end an assessment' below.

Version 1.3

Issued 1 July 2006

< Previous Next >

5.1.1: Child Support Registrar and the Child Support Register

Context

This topic explains the role of the Child Support Registrar and the purpose of the Child Support Register.

Legislative References

Sections 4, 10 and 13 *Child Support (Registration and Collection) Act 1988*

Explanation

Child Support Registrar

The Registration and Collection Act establishes the position of the Child Support Registrar, who is the General Manager of the Child Support Agency (CSA) (section 10).

Child Support Register

CSA must keep a Child Support Register (the Register) (section 13). The Register contains details of all maintenance liabilities to be collected by CSA.

Version 1.4

Issued 13 January 2004

< Previous Next >

5.1.2: Registrable maintenance liabilities and how CSA registers them

Context

A registrable maintenance liability is one that can be registered in the Child Support Register for collection by CSA. CSA registers a liability for collection by entering details of the liability in the Child Support Register.

Legislative References

Sections 4, 17, 17A, 18, 23, 24, 24A, 25, 26, 30, 38, 38A, 38B, 39 and 113A *Child Support (Registration and Collection) Act 1988*

Explanation

What is a registrable maintenance liability?

The particular liabilities that CSA can register for collection are called registrable maintenance liabilities. A registrable maintenance liability can be:

- a liability to pay child support arising under CSA's child support assessment (section 17(2)), or
- a stage 1 registrable maintenance liability to pay child maintenance or spousal maintenance as described in chapter 3.2 (section 17(1) and section 18).
- a parentage overpayment order as described in chapter 3.2.6 (section 17A).

Registering a registrable maintenance liability

CSA registers a registrable maintenance liability by entering particulars of the liability in the Child Support Register (sections 24, 24A and 25).

CSA must register a stage 1 registrable maintenance liability for collection when a payee notifies CSA of that liability (section 24). CSA will not register a stage 1 registrable maintenance liability for collection if the payee elects for CSA not to collect that liability for them (section 23(3)).

See chapter 3.3 Notification of a stage 1 registrable maintenance liability for more detail about the notification requirements and what occurs when if the payer or a court notifies CSA of a stage 1 registrable maintenance liability.

CSA must register a child support assessment for collection when it accepts a payee's application for a child support assessment (section 24A(1)), unless the payee elects for CSA not to collect that liability for them (section 24A(2)(b)). CSA will not register a child support assessment for collection if the payer applied for that child support assessment (section 24A(2)(c)).

A payee of a registrable maintenance liability that has not been registered with CSA can apply to CSA for that liability to be registered (section 25). CSA must register the liability when it receives a payee's application for registration.

Different rules apply if CSA has previously registered the registrable liability, but ceased to enforce it because

the payee elected to end CSA collection, or because CSA made a decision to end CSA collection (sections 38, 38A and 38B). In these cases, the liability remains on the Register, but it ceased to be enforceable on a specified day. The payee can apply again for CSA collection (section 39). CSA is not required to accept the payee's application (section 39). This is discussed in more detail in chapter 5.6, Ending and reapplying for CSA collection.

The effect of registering a registrable maintenance liability

If CSA registers a registrable maintenance liability, the amounts payable under the liability become a debt due to the Commonwealth, in accordance with the details of the Register (section 30(1)). The payee no longer has the right to enforce payment of the liability in a court (section 30(3)), except by instituting proceedings under section 113A of the Act.

The methods available to CSA to collect child support are discussed in detail in the following chapters:

5.2 Administrative enforcement

5.3 Non-agency payments and offsetting liabilities

5.4 Court enforcement

CSA pays to the payee the amounts that it collects in respect of the liability see chapter 5.5 Payments to payees.

Particulars to be entered in the Child Support Register

CSA must enter the following particulars of the maintenance liability in the Register (section 26):

Particulars of the child support assessment, court order or maintenance agreement that started the liability

- the payee's and payer's names
- names and dates of birth of each of the children for whom support is to be paid under the liability
- the name of any other person for whom maintenance is payable
- particulars that show the basis of the liability (i.e. whether it arises from a court order, child support assessment, or agreement and any subsequent orders, assessments or agreements that have affected the liability)
- the periodic amount payable under the liability in relation to each child or person covered by the liability
- the period at which amounts are payable under the liability
- details of any terms or conditions specified in a court order or agreement that may affect the liability.

Particulars about CSA's payment period and payment rate for the liability

CSA must enter the following particulars in the Register in relation to the payment of the maintenance liability to CSA:

- the initial payment period (if any)
- the regular payment period and whether the liability becomes due and payable each week, fortnight, 4 weeks or each month
- the rate of payment in relation to the regular payment period
- if CSA will collect payments from the payer's employer it must enter the weekly rate of payment in relation to the periodic amount or the aggregate of the periodic amounts.

Particulars about enforceability of the liability

CSA must enter the following particulars in the Register about enforceability of the liability:

- the day the liability first becomes payable to CSA
- the day the liability ceases to be enforceable by CSA
- if liability ceases to be enforceable and later becomes enforceable, CSA must enter each day on which the liability was not enforceable and the day on which it again becomes enforceable.

Other relevant particulars

CSA may also enter the following particulars:

- the daily rate of payment of the liability
- a statement of whether the liability is collected from the payer's employer
- anything else that CSA considers necessary or desirable.

Version 1.5

< Previous Next >

6.1.1: Child Support Registrar's powers

Context

The Child Support Registrar (the Registrar) holds statutory powers and functions under the Assessment Act and the Registration and Collection Act.

Legislative reference

Child Support (Registration and Collection) Act 1988

Child Support (Assessment) Act 1989

Explanation

The Registrar is authorised by Parliament, through the Assessment Act and the Registration and Collection Act, to make decisions on child support cases under those Acts.

The Registrar cannot personally make every decision on every child support case. In practice, most decisions are made by officers and employees of the Child Support Agency (CSA), which is part of the Department of Human Services (DHS). These people are either exercising a power delegated directly to them by the Registrar, or have been authorised by the Registrar (or the Registrar's delegate) to exercise their power (or delegated power) on their behalf.

Version 1.5

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.1.2: Orders for step-parents to pay child maintenance

Context

A court can make a child maintenance order requiring a step-parent to provide financial support for their step-child if satisfied that the step-parent has a duty to maintain the child.

Legislative reference

Section 25 of the *Child Support (Assessment) Act 1989*.

Sections 60D, 66D, 66M and 66N *Family Law Act 1975*.

Family Court Act 1997 (WA)

Explanation

A person can apply to CSA for an assessment of child support payable by a natural or adoptive parent of a child (section 25 Assessment Act).

A person cannot apply for a child support assessment payable by a step–parent of a child. A step–parent of a child is defined in section 60D of the Family Law Act as a person who:

- Is not a parent of the child.
- Is or was married to a parent of the child.
- Treats the child as a member of the family they formed with the child's parent (or did so during their marriage).

A person can apply to a court for an order requiring a step–parent to provide financial support for their step–child. The court will make such an order only if satisfied that the step–parent has a duty to maintain the child (sections 66D, 66M and 66N).

Who can apply?

As for all child maintenance orders.

How can an order be changed?

As for all child maintenance orders.

When does an order end?

As for all child maintenance orders.

What if a payer in a child support assessment has a child maintenance order requiring them to provide financial support for a step–child?

From 1 July 1999, CSA can treat a step–child as a relevant dependent child of a payer in a child support assessment if:

- a court has made an order requiring the payer to provide financial support for the step–child; and
- the payer is the sole or principal provider of ongoing care for their step–child, or has major contact with that step–child.

See Orders in relation to step–children at 4.3.4 for more information.

Version 1.1

Issued 1 March 2005

< Previous Next >

6.3.2: Tax file numbers and taxation information

Context

Access to taxation information is essential for the effective assessment, collection and enforcement of child support. CSA is permitted to use tax file numbers (TFNs) as an identifier, and to exchange information with the Australian Taxation Office (ATO).

Legislative References

Sections 16, 16B, and 16C *Child Support (Registration and Collection) Act 1988*

Sections 150, 150B, 150C and 150D *Child Support (Assessment) Act 1989*

Sections 16(4)(ja) and 202(ga) *Income Tax Assessment Act 1936*

Sections 8WA and 8WB *Taxation Administration Act 1953*

Sections 13 and 1718 *Privacy Act 1988*

Explanation

The Child Support legislation may specifically refer to taxation information. For example, child support assessments are based on taxable income as assessed by the Australian Taxation Office (ATO), and CSA can collect child support debts by intercepting a payer's tax refund. CSA also uses taxation information more generally for purposes related to the assessment, collection and enforcement of child support.

CSA uses TFNs as customer identifiers and to exchange information with the ATO. It is not compulsory for a person to provide their TFN to CSA. However, by quoting their TFN a customer may expedite their dealings with CSA (e.g. a customer who enters their TFN when they telephone CSA can have their call transferred promptly to the correct area, or gain access to a range of ATO payment facilities).

Authority to use taxation information

The exchange of information between CSA and ATO is permitted by the secrecy provisions of the child support and taxation legislation (sections 16(2A), 16(3)(ca) and 16(6) Registration and Collection Act, sections 150(2A), 150(3)(ca) and 150(6) Assessment Act). In addition, the Child Support legislation specifically authorises CSA to:

- request, but not compel, a person to provide their TFN (section 16B Registration and Collection Act, section 150B Assessment Act).
- require the ATO to provide information the ATO possesses about people, including TFNs (section 16C(1) Registration and Collection Act, section 150D(1) Assessment Act).
- use that information to: identify a person; decide whether a person can apply for a child support assessment; make or amend a child support assessment; and decide whether a terminating event has happened (section 150D(2) Assessment Act)
- use that information to: identify a person; and register and collect child support payments (section 16C(2) Registration and Collection Act).

One of the objects of the tax file number system is to facilitate the administration of the Child Support legislation (section 202(ga) Income Tax Assessment Act). ATO staff are able to disclose protected information about taxpayers to CSA where the information is necessary for the administration of the Child Support legislation (section 16(4)(ja) Income Tax Assessment Act).

Privacy Commissioner's guidelines

The Federal Privacy Commissioner has issued guidelines about the collection, storage, use and security of TFNs. The TFN guidelines are legally binding and a breach of the guidelines is an interference with individual privacy. The TFN guidelines recognise that CSA uses TFNs for child support purposes and explain some of CSA's obligations when collecting and using them.

Version 1.2

Issued 27 August 2002

< Previous Next >

5.5.3: Top up

Context

The Registration and Collection Act allows CSA to use funds from the Consolidated Revenue Fund to 'top up' the amounts received from employers in limited circumstances.

Legislative References

Sections 4, 47, 77 and 78 *Child Support (Registration and Collection) Act 1988*

Explanation

Where CSA is collecting child support from a payer's salary or wages, it sends the employer a notice that instructs them to:

- make periodic deductions from salary and wages paid to the payer, from a specified day in accordance with the specified weekly deduction rate, and
- pay CSA the amounts deducted each month by the 7th day of the following month and
- give CSA notice of the amounts deducted (section 47(1)).

See Chapter 5.2 Administrative enforcement.

If CSA is satisfied that an employer has deducted the required amounts from a payer's salary or wages, but has failed to pay them to CSA on time, it can transfer equivalent amounts from consolidated revenue for payment to the payee. CSA must do this if it has not received a deduction by the closing day of the month in which the employer was required to pay the amount. The closing day for any month is 9 days before the first Wednesday of the following month (section 4(1)).

CSA can also transfer funds from consolidated revenue to the Reserve for payment to a payee when:

- an employer remits less than the total expected amount to CSA and they are required to deduct amounts for more than one payer:
- the employer has not advised CSA of the particulars of the payment (section 78).

The transfer of funds to the Reserve in these circumstances is commonly referred to as 'top up'.

Although top up is used to make a payment to a payee, the amount 'topped up' is still required to be paid to CSA by either the employer or the payer. The debt is recoverable from the employer if they deducted the amount from the payer's salary or wages, but failed to remit it to CSA. If the employer did not deduct the amount from the payer's salary or wages, the payer is still obliged to pay the amount to CSA as a child support debt. CSA will recover the 'topped up' amount from those payments when made.

Version 1.1

Issued 23 January 2008

< Previous Next >

1.1.2: Historical perspective

Prior to the introduction of CSA it was generally recognised that the system where child maintenance was dealt with by the courts was not working for the benefit of all separated parents and their children. For example:

- obtaining a court order was too expensive for many separated parents
- the courts were ordering consistently low levels of maintenance which did not reflect the capacity of parents to provide financial support for their children
- orders made by the courts could not be easily updated to take account of inflation or changes in the parents' capacity to pay
- it was difficult to enforce court orders. As a result, less than 30% of child maintenance was being paid
- there had been a rapid increase in the divorce rate with a corresponding increase in the number of parents receiving pensions.

In October 1986 the Federal Government proposed reform in 3 areas:

- enforcement of maintenance collection through the Australian Taxation Office
- use of a formula to determine the level of maintenance orders
- the application of this formula by an administrative process

---

Version 1.0

Issued 1 October 2002

< Previous Next >

1.2.1: Amendments to the Registration and Collection Act

Context

The Registration and Collection Act has been amended since it commenced on 1 June 1988, as have the Regulations under that Act.

Legislative references

- *Child Support Act 1988*
- *Child Support (Registration and Collection) Act 1988*
- *Child Support (Registration and Collection) Regulations 1988*
- *Child Support Amendment Act 1988*
- *Child Support (Assessment) Act 1989*
- *Social Security and Veterans' Affairs Legislation Amendment Act (No 3) 1989*
- *Child Support Legislation Amendment Act 1990*
- *Taxation Laws Amendment Act (No 3) 1991*
- *Child Support Legislation Amendment Act 1992*
- *Child Support Legislation Amendment Act (No 2) 1992*
- *Insolvency (Tax Priorities) Legislation Amendment Act 1993*
- *Corporate Law Reform Act 1992*
- *Child Support Legislation Amendment Act 1995*
- *Taxation Laws Amendment Act 1995*
- *Family Law Reform (Consequential Amendments) Act 1997*
- *Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997*
- *Child Support Legislation Amendment Act (No 1) 1997*
- *Audit (Transitional and Miscellaneous) Amendment Act 1997*
- *Child Support Legislation Amendment Act 1998*
- *Public Employment (Consequential and Transitional) Amendment Act 1999*
- *Federal Magistrates (Consequential Amendments) Act 1999*
- *Child Support Legislation Amendment Act 2000*
- *Family Law Amendment Act 2000*
- *Child Support (Regulation and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*
- *Child Support Legislation Amendment Act 2001*
- *Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001*
- *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*
- *Child Support Legislation Amendment (Reform of the Child Support Scheme - Initial Measures) Act 2006*
- *Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006*
- *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*

CSA was established with the enactment of the *Child Support Act 1988*, subsequently renamed the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act). From 1 June 1988 CSA could register, collect and enforce court orders and court registered agreements for child support and spousal maintenance.

The Registration and Collection Act has been amended from time to time since then. Full details of the amending acts are provided above. The significant changes are listed below.

From 1 October 1989

- *Child Support Act 1988* renamed the *Child Support (Registration and Collection) Act 1988*.
- CSA can collect the amounts payable under a child support assessment.

From 6 April 1992

- CSA can issue a notice to a third party who holds money for a child support payer to pay that money to CSA in satisfaction of child support arrears.
- The Registration and Collection Act was amended to facilitate CSA collecting child support where a payer was overseas.
- CSA can credit an amount as a non-agency payment where the payer made that payment to a third party in satisfaction of a debt owed by the payer and/or payee if both parents intended it to be for child support and there are special circumstances.
- A court can set aside or prevent a transaction intended to reduce or defeat a payer's ability to pay child support.

From 29 May 1995

- A payer can elect for CSA not to enforce a court order during a 'low-income non-enforcement period'.
- A payer and payee can jointly elect for CSA not to enforce a court order for a child who is not in the care of the payee.
- A payee receiving Centrelink payments can elect for CSA not to collect their child support for them, as long as the payer has a satisfactory payment record. The payee can then make private payment arrangements with the payer.
- A payee who had elected for CSA not to collect child support can later make an application for collection and ask CSA to collect up to 9 months of arrears.

From 22 July 1997

- A payer can elect for CSA not to collect their child support by employer withholding.

From 1 July 1999

- CSA can suspend disbursement of child support while a court considers a payer's application for a declaration that the payee was not entitled to a child support assessment.
- CSA can ask Centrelink to deduct a prescribed amount for child support from a payer's Centrelink payments.
- CSA can require parents to make private payment arrangements if the payer has established a satisfactory payment record and CSA is satisfied that regular payments are likely to continue.
- Parents who each have child support debts can offset amounts they owe to each other.
- Payers can elect to pay their child support in accordance with their pay cycle, rather than monthly.
- Payees can elect to collect their own child support at any time. There is no longer a requirement for the payer to have a satisfactory payment record before a payee receiving Centrelink payment can elect for CSA to stop collection.

Changes to crediting of non-agency payments

- CSA no longer requires that there be special circumstances before it can credit payments made directly to the payee or a third party where the payer and payee intended the payments to be for child support.
- CSA can credit the value of non-cash payments where the payee and payer intended the payment to be for child support.
- A payer can ask CSA to credit certain payments (such as school fees, essential medical and dental fees and rent for the payee) in satisfaction of up to 25% of their monthly child support liability without the agreement of the payee.

CSA can refuse to credit a non-agency paymentin the circumstances of a particular case.

From 3 May 2000

The Registration and Collection Act was amended to allow Australia to give effect to its international obligations in relation to maintenance.

From 30 June 2001

- CSA can issue a departure prohibition orderto prevent a payer leaving the country where that payer has persistently failed to meet his or her child support obligations.
- Administrative changes to give effect to CSA's move to the Department of Family and Community Services. The Child Support Registrar is now the General Manager of CSA, rather than the Commissioner of Taxation.

From 1 July 2002

- CSA can intercept a payer's Family Tax Benefitwhere the payer has arrears of child support.

From 4 May 2006

- CSA customers can appeal against CSA making a departure prohibition order in the Federal Magistrates Court.

From 1 July 2006

- The rate at which CSA can credit a prescribed non-Agency paymentincreases from 25% of the monthly child support liability to 30%.

From 1 January 2007

- The Social Security Appeals Tribunal provides a process for parents who want a review of a CSA decision made under the Assessment Act or the Registration and Collection Act.
- A payee can pursue court enforcement of a debt whilst it is registered for collection by CSA.
- A court hearing an enforcement application made by a payee has the same powers as CSA to obtain information in order to collect child support.
- A court has increased powers to make orders staying a child support assessment or collection pending the determination of an objection, application for review, or appeal to a court.
- CSA can register for collection an amount repayable by a former payee to a former payer under a parentage overpayment order

From 22 June 2007

- All stay order provisions are located within the Registration and Collection Act regardless of whether the relevant proceeding has commenced under the Assessment Act or the Registration and Collection Act.
- Some minor changes to Social Security Appeals Tribunal (SSAT) arrangements - including provision for an applicant to withdraw their SSAT application.
- Objections and accompanying documents to be sent to the other party.
- Where a court orders a payer to make a payment in private payee enforcement proceedings that payment must be made to CSA.
- An employer's obligation to withhold money from a payer's salary and wages is extended to include payments to independent contractors.
- Some changes to the secrecy provisions including the following:
    - CSA can communicate protected information to persons as necessary to prevent a credible threat to the life, health or welfare of a person.
    - CSA can communicate protected information to brief the Minister in respect of a range of

circumstances relating to the Minister's duties.
    - CSA can communicate protected information to a person who has the consent of the person to whom the information relates to obtain that information.
    - CSA can communicate protected information in specific circumstances relating to missing people and locating a relative or beneficiary of a deceased person.
    - A new offence for unauthorised disclosure of information.

From 19 July 2007

The Registration and Collection Act was amended to incorporate measures relating to Australia's international obligations in relation to maintenance - these measures were previously contained in separate regulations. There were also minor amendments to the legislation as follows:

- A maintenance liability cannot be registered under the Registration and Collection Act unless one party resides in Australia.
- One registered maintenance liability will cease to have effect if a second maintenance liability is registered in relation to the same child, payee and payer. The Registrar is able to refuse to accept an application for an Australian child support assessment that would override an overseas liability already registered.
- A payer is able to apply for registration of a maintenance liability provided that either the payer or the payee resides overseas in a reciprocating jurisdiction.
- There are some increased time allowances in relation to various processes where one party to a maintenance liability is resident in a reciprocating jurisdiction. Generally these increased time allowances apply only to the party who is resident in the reciprocating jurisdiction.
- A person who has a liability to pay child support to the Registrar because of an overseas maintenance liability is able to apply for non-enforcement of the liability during a period of low income.

From 1 January 2008

- 72A notices able to be issued for less than the total amount of outstanding child support.
- CSA is not required to serve a copy of the objection and accompanying documents on the other parent where the objection is to the making of, or refusal to make, a departure determination under Part 6A if CSA is satisfied that the rights of the other parent will not be affected by any decision made by the CSA.
- Parents can apply for an extension of time to submit an objection over the phone as well as in writing.
- Payers can object to the acceptance of their application for a child support assessment.
- Range of debts collectable via tax refund intercepts extended.

Version 1.4

Issued 1 January 2008

< Previous Next >

1.2.2: Amendments to the Assessment Act

Context

The Assessment Act has been amended since it commenced on 1 October 1989.

Legislative references

Social Security and Veterans' Affairs Legislation Amendment Act (No 3)1989

Child Support (Assessment) Regulations 1989

Child Support (Assessment) ACT 1989

Child Support Legislation Amendment Act 1990

Child Support Legislation Amendment Act 1992

Child Support Legislation Amendment Act (No 2) 1992

Child Support Legislation Amendment Act 1995

Social Security Legislation Amendment (Family Measures) Act 1995

Family Law Reform (Consequential Amendments) Act 1995

Statute Law Revision Act 1996

Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997

Income Tax (Consequential Amendments) Act 1997

Child Support Legislation Amendment Act (No 1) 1997

Social Security Legislation Amendment (Parenting and other Measures) Act 1997

Social Security and Veterans' Affairs Legislation Amendment (Budget and other Measures) Act 1998

Child Support Legislation Amendment Act 1998

A New Tax System (Fringe Benefits Reporting) Act 1999

Public Employment (Consequential and Transitional) Amendment Act 1999

Federal Magistrates (Consequential Amendments) Act 1999

Child Support Legislation Amendment Act 2000

Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000.

A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No 2) 1999

A New Tax System (Family Assistance and Related Measures) Act (No 2) 2000

Family Law Amendment Act 2000

Child Support Legislation Amendment Act 2001

Family and Community Services Legislation Amendment (Application of Criminal Code) Act 2001

Child Support Legislation Amendment (Reform of the Child Support Scheme - Initial Measures) Act 2006

Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform

Consolidation and Other Measures) Act 2007

Explanation

Stage 2 of the child support scheme started with the commencement of the Assessment Act. From 1 October 1989, CSA could accept applications for an administrative assessment of child support from carers of eligible children. The Assessment Act has been amended from time to time since then. Full details of the amending acts are provided above. The significant changes are listed below.

From 6 April 1992

- Parents can apply to CSA for a change of assessment in special circumstancesfor a child support year commencing on or after 1 July 1992.
- In most cases, a parent cannot apply to a court for a change of assessment in special circumstances for a child support year commencing on or after 1 July 1992 unless CSA has already considered an application from one of the parents for a change of assessment.
- Payees receiving more than minimum family payment cannot elect to end their child support assessment.
- Court orders and court-registered agreements for child support cease to have effect when CSA makes an administrative assessment of child support for that child. (Before 6 April 1992, CSA would offset any amount payable under a court order with amounts payable under an administrative assessment.)

From 11 December 1992

- CSA can choose an appropriate default incomewhen making a new assessment for a person whose taxable income for the last relevant year is not available. (Before 11 December 1992, CSA was required to use a default income figure equivalent to 2.5 time average weekly earnings.)

From 1 July 1993

- A person who cares for a child between 30% and 40% of the nights in a child support year is now considered to be an eligible carer, with 'substantial contact'. The other person caring for the child has 'major contact'. The formula provisions are modified to give effect to this change.
- A payer or payee can no longer revoke their estimate of taxable income unless they made a new estimate election. (Before 1 July 1993 a parent could revoke their estimate and have their case return to the previous assessment based upon their income 2 years prior.)
- A parent can make a new estimate for a child support yearevery 2 months instead of 3 months.
- Penalties apply for parents who underestimatetheir taxable income.

From 29 May 1995

- CSA can be satisfied that a person is a child's parent if one of a number of ' presumptions' apply.
- CSA must refer a child support agreement to the Secretary of DSS if the payee receives more than minimum family payment or Sole Parent Pension. CSA can only accept these agreements if the Secretary decides that the agreement passes the 'reasonable action to obtain maintenance' test.
- CSA must refuse to accept an agreement if the payee has not applied for a child support assessment and receives more than the minimum family payment or Sole Parent Pension.

From 22 July 1997

- CSA can now be satisfied that a person is a parent of a childif:
  - the child is born within 44 weeks of the annulment of that person's marriage; or
  - the child is born after a marriage has been dissolved but within 44 weeks after a period of cohabitation by the 2 people concerned; or
  - the child is born to a woman who lived with the man anytime during the period beginning 44 weeks and ending 20 weeks before the child's birth.

From 23 December 1997

- A parent's election to use an estimate of their taxable income has a limited retrospective effect.

From 1 July 1999

- Payers and payees can object to CSA decisions under the Assessment Act.
- Parents can now provide information and make some applications over the telephone, which CSA previously required in writing.
- A liable parent can apply for a child support assessment.
- A child support assessment starts from the date the application was lodgedwith CSA (previously backdated up to 28 days).
- Child support assessments are based on both the factual and lawful daily care of the child.
- A payee can apply for a child support assessment for a child in secondary education to continue to the end of the school year in which the child turns 18.
- CSA can include relevant dependant children in a child support assessment from the date of notification unless the Registrar is notified within 28 days of the child becoming a relevant dependant child, or within 28 days of a notice of assessment.
- Changes to levels of care of a child will have effect from the date the Registrar is notified of the change.
- Payees who receive more than the base rate of Family Tax Benefit Part A can elect to end their assessment if the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) approves the election. The Secretary must be satisfied that the payee is taking reasonable action to obtain maintenance for the child.
- A payer's step-child is considered to be their relevant dependant if a court has made an order under section 66M of the *Family Law Act 1975*.

Changes to the COA process

- CSA can make a decision to either increase or decrease the amount of child support payable when making a decision on a change of asessment application.
- CSA can initiate a change of assessment in special circumstances (this is referred to as a Registrar initiated change of assessment).
- A payee can apply for a change of assessment if they incur child care costs of more than 5% of their child support income amount.

Changes to estimate provisions

- The final day for a parent to lodge an estimate of their taxable income for the 1998-1999 child support year was extended to 31 July 1999.
- A payer or payee's estimate of taxable incomefor a child support period commencing on or after 1 July 1999 can only affect their child support assessment prospectively.
- CSA can refuse, review or amend a payer or payee's estimate of taxable income.

Changes to the formula assessment provisions

- The payee's disregarded income is based on the 'all employees average weekly earnings' figure rather than the usually higher average weekly earnings figure and extra amounts according to the age of the children for whom child support is payable were no longer added to it.
- The payer's exempt income amount is increased to 110% of the unpartnered rate of social security pension.
- When the liable parent has relevant dependant children, the exempt income amount is increased to 220% of the annual amount of the partnered rate of social security pension.
- The minimum child support rate payable is $260 (previously zero).
- CSA can reduce a $260 assessment upon application from the payer, where the person's total income in the first 12 months of a child support period is less than $260.

- In calculating the amount payable in an assessment the payer's liability is reduced by 50 cents for every dollar of the carer parent's income above the disregarded income amount.
- Any supplementary income (exempt foreign income, net rental losses) is added back to the liable parent's taxable income amounts. Reportable fringe benefits are included from 1 July 2000.
- When the parents share care of the children of a relationship, additional amounts are added to the liable parent's exempt income for any children in their sole, major or shared care.

Changes to the assessment period and income used

- Child support is assessed in child support periods rather than child support years. A child support period may last up to 15 months.
- Child support assessments are based on the taxable income for the most recent taxation year rather than taxable income for the financial year before last. CSA no longer uses an inflation factor to adjust a parent's taxable income.
- Transitional arrangements applied for all existing cases. CSA made a new child support assessment for the child support period starting 1 July 1999, based upon the parents' taxable income for 1997-98, modified by an inflation factor. CSA made another new assessment when the payer's 1998-99 tax assessment issued before 1 June 2000, or if the payee's 1998-99 tax assessment issued first and the payee's income would affect the rate of child support.

From 3 May 2000

The Assessment Act was amended to allow Australia to give effect to its international obligations in relation to maintenance.

From 30 June 2001

- A payer or payee can apply for change of assessment if they are earning additional income for the benefit of resident children.
- A non-parent carer is not considered an eligible carer for a child whose parent or guardian does not consent to the non-parent carer providing care for the child.
- A parent can apply to a court for an order for departure from administrative assessment (section 116), or appeal against an incorrect assessment (section 110), or appeal against the acceptance or non acceptance of a child support agreement (section 132) if they disagree with CSA's decision on the other parent's objection.

From 2 August 2001

- CSA can disregard amenity allowances or gratuities paid to prisoners, disability support pensions paid under social security law and totally and permanently incapacitated pension paid to a veterans under Veterans' Affairs law when considering an application for the minimum annual rate of child support to be reduced to nil.

From 1 July 2006

- The annual minimum rate of child support is increased to $320 (indexed each year to the Consumer Price Index).
- The high income cap for payers is reduced to 2.5 times the annual equivalent of all employees average weekly total earnings (EAWE).
- The circumstances under which a parent's income can be increased for child support assessment purposes because CSA decides that the parent has a higher earning capacity are more limited.

From 1 January 2007

- A payee is able to apply directly to a court if CSA has refused their application for assessment because they were unable to satisfy CSA that the person named is a parent of the child or children.
- CSA is unable to make change of assessment decisions that affect a period more than 18 months

earlier than the date of the application unless the court has granted leave. If a court grants leave it can specify a period for which an assessment can be changed of up to seven years prior to the application, and may hear the application itself.
- If a court grants a declaration that a person is not a parent of a child (under section 107), the court must, as soon as practicable, consider making an order for repayment of child support to the person who is not the parent of the child.

From 22 June 2007

- Some changes to the secrecy provisions including the following:
  - CSA can communicate protected information to persons as necessary to prevent a credible threat to the life, health or welfare of a person.
  - CSA can communicate protected information to brief the Minister in respect of a range of circumstances relating to the Minister's duties.
  - CSA can communicate protected information to a person who has the consent of the person to whom the information relates to obtain that information.
  - CSA can communicate protected information in specific circumstances relating to missing people and locating a relative or beneficiary of a deceased person.
  - A new offence for unauthorised disclosure of information.
- Removal of the restriction that CSA information gathering (under section 161) in respect of third parties is limited to financial information.
- Stay order provisionshave been removed from the Assessment Act. All of the stay order provisions are located within the Registration and Collection Act regardless of whether the relevant proceeding has commenced under the Assessment Act or the Registration and Collection Act.

From 19 July 2007

The Assessment Act was amended to incorporate measures relating to Australia's international obligations in relation to maintenance - these measures were previously contained in separate regulations. There were also minor amendments to the legislation as follows:

- An application for assessment can only be accepted where at least one party resides in Australia. A terminating event occurs in relation to a child support assessment if both parties cease to be resident in Australia.
- An application for assessment from a payee who is resident in a reciprocating jurisdiction must be made through the central authority in the country where the payee resides. The application may be initiated by the payee and given to the central authority to forward to the Registrar, or may be initiated by the central authority.
- An application for assessment from a payer who is resident in a reciprocating jurisdiction may be made by the payer giving an application directly to the Registrar, or by giving an application to the central authority to forward to the Registrar.
- Where the application was initiated by a central authority on behalf of the payee, the central authority has power to veto the ending of the assessment by the payee.
- A child support agreement may be made between parents, one of whom is resident in a reciprocating jurisdiction.
- A registered maintenance liability ceases to have effect if a second maintenance liability is registered in relation to the same child, payee and payer. The Registrar is able to refuse to accept an application for an Australian child support assessment that would override an overseas liability already registered.
- Provisions relating to determining overseas income apply in relation to a payee who is resident in a reciprocating jurisdiction but is covered by an Australian child support assessment.
- There are some increased time allowances in relation to various processes where one party to a maintenance liability is resident in a reciprocating jurisdiction. Generally these increased time allowances apply only to the party who is resident in the reciprocating jurisdiction.
- The date from which an overseas maintenance liability first becomes enforceable is the date that the Registrar receives the application for registration.

From 1 January 2008

- The definition of an income amount order narrowed which provides customers increased opportunity to lodge an estimate of income.
- Alteration of estimate provisions to allow customers to lodge an estimate for the remainder of the child support period, after an income amount order expires.
- Customers can apply to extend the time a relevant dependant child is taken into account in their child support assessment until the end of the school year if the child will turn 18 during that year and is still in full-time secondary education.
- A payer is able to have their relevant dependant child taken into account in their child support assessment from the date the assessment started if they advise CSA within 28 days of the notice of assessment being issued to them and where the notice is issued after 4 December 2007.
- The rental property definition updated.
- Assessment notices amended to include only age range of relevant dependant children and liable children from other cases.

Version 1.5

Issued 1 January 2008

< Previous Next >

1.3.1: Objects of the Assessment Act

Context

The Assessment Act contains a statement of Parliament's intention in enacting that legislation.

Legislative References

Section 3 *Child Support (Assessment) Act 1989*

Section 4 *Child Support (Assessment) Act 1989*

Explanation

Principal object

The principal object of the Assessment Act is to ensure that children receive a proper level of child support from their parents.

Particular objects

The particular objects of the Assessment Act include:

- that the level of financial support is provided in accordance with the parents' capacity to provide financial support. Parents with a like capacity should provide like amounts
- that the level of support should be determined by legislatively fixed standards
- that carers should be able to have the amount of financial support assessed without the need for court proceedings
- that children share in changes in the standard of living of both of their parents, whether or not they live with both or either of them, and
- that Australia is in a position to give effect to its obligations under international agreements or arrangements which relate to maintenance obligations arising from a family relationship, parentage or marriage.

Duty of parents to maintain their children

The Assessment Act also states that a parent has a primary duty to maintain their child. This duty:

- is not lower in priority than the duty of a parent to maintain any other child or person.
- has priority over all commitments of the parents apart from necessary commitments for self-support or necessary commitments to support another child or person that the parent has a duty to maintain.
- is not affected by the duty of any other person to maintain the child or any entitlement the child or another person may have to receive an income tested pension, benefit or allowance.

Version 1.0

Issued 1 October 2002

< Previous Next >

1.3.2: Objects of the Registration and Collection Act

Context

The Registration and Collection Act contains a statement of Parliament's intention in enacting that legislation.

Legislative reference

Section 3 *Child Support (Registration and Collection) Act 1988*

Explanation

Objects of the Registration and Collection Act

The principal objects of the Registration and Collection Act are to ensure:

- that children receive the financial support from their parents that the parents are liable to provide, and
- that periodic amounts payable by parents towards the maintenance of their children are paid on a regular and timely basis, and
- that Australia is in a position to give effect to its obligations under international agreements or arrangements which relate to maintenance obligations arising from a family relationship, parentage or marriage.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.4.1: Overview

Context

With the acceptance of the current child support legislation by the Western Australian Parliament on 23 October 2007, the child support scheme applies uniformly to all Australian children (with the exception of children who have at least one parent residing in a non-reciprocating jurisdiction).

Legislative references

Section 51 *Commonwealth of Australia Constitution Act*

Explanation

The child support scheme is a Commonwealth legislative scheme. The *Commonwealth of Australia Constitution Act* (The Constitution) gives the Commonwealth Parliament power to make laws about marriage and children of those marriages.

Western Australia is the only Australian state that has not referred to the Commonwealth its power to make laws about children whose parents are not married. This means that the Western Australian Parliament retains its powers to make laws about Western Australian children whose parents have never been married (WA ex-nuptial children), including child support laws.

Since the start of the child support scheme, the WA Parliament has enacted laws adopting the Commonwealth Child Support legislation, including amendments. However, this has not happened at the same time that the Commonwealth laws started to apply in the rest of Australia. Consequently, CSA has had to make different arrangements for child support cases that involve WA ex-nuptial children (i.e. WA ex-nuptial cases).

From 23 October 2007, the child support scheme applies uniformly to all Australian children (with the exception of children who have at least one parent residing in a non-reciprocating jurisdiction).

The Christmas and Cocos (Keeling) Islands are not part of WA. These are external territories.

Frequently asked questions

What are the current differences between the way the child support scheme applies to WA ex-nuptial children and other cases?

The child support scheme currently applies to WA ex-nuptial children as it does to all other children as the WA Parliament has adopted all of the current child support legislation.

How can I see if a section of the Assessment Act has ever been amended and work out when the amendment first applied to WA ex-nuptial cases?

Chapter 1.4.3 sets out when all the amendments to the Assessment Act took effect for WA ex-nuptial children.

Version 1.5

Issued 1 January 2008

< Previous Next >

1.4.2: Application of the Registration and Collection Act to WA ex-nuptial cases

Context

The *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act) as amended, applies to WA ex-nuptial cases to the extent that it has been adopted by the WA Parliament.

Legislative References

Child Support (Registration and Collection) Act 1988 (Cth)

Schedule 5, *Child Support Legislation Amendment (Reform of the Child Support Scheme - Initial Measures) Act 2006* (Cth)

Child Support (Adoption of Laws) Act 1990 (WA)

Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006 (Cth)

Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007(Cth)

Explanation

The *Registration Collection Act* came into operation on 1 June 1988. It applied immediately to WA ex-nuptial children without having to be adopted by the WA parliament.

The WA Parliament has adopted the Registration and Collection Act and all amendments made prior to 31 October 2007 *(Child Support (Adoption of Laws) Act 1990* (WA) and see also Schedule 5, *Child Support Legislation Amendment (Reform of the Child Support Scheme - Initial Measures) Act 2006* (Cth)).

Amendments that apply to WA ex-nuptial cases from 1 November 2007

Amendments to the Registration and Collection Act made by the *Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006 (Cth)* now apply to cases involving WA ex-nuptial children. Those amendments, which apply to WA ex-nuptial children from 1 November 2007 and all other cases from 1 January 2007, are as follows:

- The Social Security Appeals Tribunal provides a process for parents who want a review of a CSA decision made under the Assessment Act or the Registration and Collection Act.
- A payee can pursue court enforcement of a debt whilst it is registered for collection by CSA.
- A court hearing an enforcement application made by a payee has the same powers as CSA to obtain information in order to collect child support.
- A court has increased powers to make orders staying a child support assessment or collection pending the determination of an objection, application for review, or appeal to a court.
- CSA can register for collection an amount repayable by a former payee to a former payer under a parentage overpayment order.

Amendments to the Registration and Collection Act made by the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007 (Cth)* now apply to cases involving WA ex-nuptial children. Those amendments, which apply to WA ex-nuptial children from 1 January 2008 and all other cases from 22 June 2007, are as follows:

- All stay order provisions are located within the Registration and Collection Act regardless of whether the relevant proceeding has commenced under the Assessment Act or the Registration and Collection Act.
- Some minor changes to Social Security Appeals Tribunal (SSAT) arrangements - including provision for an applicant to withdraw their SSAT application.
- Objections and accompanying documents to be sent to the other party.
- Where a court orders a payer to make a payment in private payee enforcement proceedings that payment must be made to CSA.
- An employer's obligation to withhold money from a payer's salary and wages is extended to include payments to independent contractors.
- Some changes to the secrecy provisions including the following:
    - CSA can communicate protected information to persons as necessary to prevent a credible threat to the life, health or welfare of a person.
    - CSA can communicate protected information to brief the Minister in respect of a range of circumstances relating to the Minister's duties.
    - CSA can communicate protected information to a person who has the consent of the person to whom the information relates to obtain that information.
    - CSA can communicate protected information in specific circumstances relating to missing people and locating a relative or beneficiary of a deceased person.
    - A new offence for unauthorised disclosure of information.

All other provisions of the Registration and Collection Act which came into effect on 1 January 2008 also came into effect for cases involving WA ex-nuptial children on the same date.

Amendments that apply to WA ex-nuptial cases from a later date

Provisions of the Registration and Collection Act which will come into effect on 1 July 2008 will also come into effect for cases involving WA ex-nuptial children on the same date.

Version 1.4

Issued 1 January 2008

< Previous Next >

1.4.3: Application of the Assessment Act to WA ex-nuptial cases

Context

The *Child Support (Assessment) Act 1989* (the Assessment Act) and its amendments apply to WA ex-nuptial cases to the extent that it has been adopted by the WA Parliament.

Legislative References

Child Support (Assessment) Act 1989

Child Support (Adoption of Laws) Act 1990 (WA)

Child Support (Adoption of Laws) Amendment Act 1994 (WA)

Child Support (Adoption of Laws) Amendment Act 2000 (WA)

Child Support (Adoption of Laws) Amendment Act 2002 (WA)

Child Support Legislation Amendment Act 1998

Family Court Act 1997 (WA)

Child Support Legislation Amendment (Reform of the Child Support Scheme - Initial Measures) Act 2006

Family Legislation Amendment Act 2006 (WA)

Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006 (Cth)

Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007(Cth)

Explanation

The WA Parliament has adopted the Assessment Act and all amendments made to it. The arrangement by which the WA Parliament has adopted the laws means that from time to time CSA must treat WA ex-nuptial cases differently to other cases.

Commencement of the Assessment Act

The Assessment Act came into operation on 1 October 1989. It did not apply to WA ex-nuptial children immediately. Carers of ex-nuptial children resident in WA could still apply to the WA Family Court for orders for child maintenance. CSA could register these court orders under the Registration and Collection Act.

WA adoption of Assessment Act from 19 January 1991

WA adoption of Assessment Act amendments from 9 December 1994

WA adoption of Assessment Act amendments from 30 June 2000

WA adoption of Assessment Act amendments from 1 January 2001

WA adoption of Assessment Act amendments from 9 December 2002

WA adoption of Assessment Act amendments from 1 August 2006

WA adoption of Assessment Act amendments from 1 November 2007 and later dates

Amendments that apply to WA ex-nuptial cases from 1 November 2007

Amendments that apply to WA ex-nuptial cases from 1 January 2008

Amendments that apply to WA ex-nuptial cases from a later date

WA adoption of Assessment Act from 19 January 1991

WA Parliament adopted the Assessment Act from 19 January 1991. From that date the following arrangements applied to WA ex-nuptial cases.

- Ex-nuptial children living in WA were eligible children for the purposes of the Assessment Act and the people who cared for them were able to apply for an administrative assessment of child support.
- Carers of WA ex-nuptial children could no longer apply to the court for variations to existing court orders and registered agreements. A carer in a WA ex-nuptial case could have a court order for maintenance and be entitled to apply for an administrative assessment of child support payable by the same payer for the same child. In these cases, CSA offset the overlapping Stage 1/Stage 2 liabilities.

Example

M and F are the parents of A.

M and F separated on 1 December 1989. They were never married. A lives with M in Western Australia.

M applied to the Western Australian Family Court for an order requiring F to pay maintenance for A. The court ordered F to pay $25 per week. M registered the order with CSA and CSA started collecting child support from F.

M applied to CSA on 3 February 1991 for an administrative assessment of child support. CSA accepted M's application and worked out that F should pay $100 per week. M's court ordered amount remained as $25 per week and the assessment amount was reduced to $75 per week so that the overall amount payable (comprising both liabilities) was $100 per week.

WA adoption of Assessment Act amendments from 9 December 1994

The WA Parliament adopted amendments made to the Assessment Act since the last adoption from 9 December 1994. From that date the following arrangements applied to WA ex-nuptial cases.

- Parents in a WA ex-nuptial case could apply to CSA for a change to their assessment in the special circumstances of the case for any child support year commencing 1 July 1992 onwards rather than applying to the court.
- Payees in WA ex-nuptial cases who received more than minimum family payment from Centrelink could no longer elect to end their child support assessments.
- CSA no longer offset overlapping liabilities for WA ex-nuptial cases. Instead, a court order for child support ceased to have effect when child support became payable under an administrative assessment for the child.
- A person was considered an eligible carer of a WA ex-nuptial child if they cared for the child for at least 30% of the nights in the child support year. This level of care is called substantial contact. If only one other person cares for the child, that person's level of care was considered to have major contact.
- If the payer or payee's taxable income for the last relevant year was not available when CSA was making a new child support assessment for a WA ex-nuptial case, CSA could choose an appropriate default income for that person. Before 9 December 1994, CSA was required to use a default income figure equivalent to 2.5 time average weekly earnings.
- A payer or payee in a WA ex-nuptial case could no longer revoke their estimate of taxable income unless they made a new estimate election. Before 9 December 1994 a person could revoke their estimate and have their case return to the previous assessment based upon their income 2 years prior. Estimates could also be replaced by new estimates every 2 months rather than 3 months.
- Courts were required to give reasons for making orders by consent for a change of assessment in special circumstances, or the provision of 'in kind' child support in cases where the payee in a WA ex-

nuptial case received an income tested pension, benefit or allowance.

WA adoption of Assessment Act amendments from 30 June 2000

The WA Parliament adopted further amendments to the Assessment Act from 30 June 2000. From that date the following arrangements applied to WA ex-nuptial cases.

- The start date of the liability arising from acceptance of an application for an assessment in a WA ex-nuptial case was changed to the date the application was lodged.
- Payees in WA ex-nuptial cases can apply for the administrative assessment of child support for a child in secondary education to continue to the end of the school year in which the child turns 18.
- Payers and payees in WA ex-nuptial cases can now provide information and make some applications over the telephone, which CSA previously required in writing.
- CSA can now be satisfied that a person is a parent of a WA ex-nuptial child if:
    - the child is born within 44 weeks of a marriage being annulled; or
    - the child is born after a marriage has been dissolved but within 44 weeks after a period of cohabitation by the 2 people concerned; or
    - the child is born to a woman who lived with the man anytime during the period beginning 44 weeks and ending 20 weeks before the child's birth.
- Payers and payees in WA ex-nuptial cases can object to CSA decisions under the Assessment Act.
- Payers and payees in WA ex-nuptial cases may only apply to a court for a departure from administrative assessment (section 116), or appeal against an incorrect assessment (section 110), or appeal against the acceptance or non-acceptance of a child support agreement (section 132) providing they have personally objected to the decision and it has been disallowed or partly allowed.
- CSA can make a decision to either increase or decrease the amount of child support payable when making a change of assessment decision on an application by a payer or payee in a WA ex-nuptial case.
- CSA can initiate a change of assessment in special circumstances for a WA ex-nuptial case.
- A liable parent in a WA ex-nuptial case can apply for an administrative assessment.
- CSA will include relevant dependent children in a child support assessment for a WA ex-nuptial case from the date of notification unless CSA is notified within 28 days of the child becoming a relevant dependant child, or within 28 days of a notice of assessment.
- Changes to levels of care of a child in a WA ex-nuptial case will have effect from the date CSA is notified of the change.
- Payees in WA ex-nuptial cases who receive more than the base rate of Family Tax Benefit Part A can elect to end their assessment if the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) approves the election. The Secretary must be satisfied that the payee is taking reasonable action to obtain maintenance for the child.
- CSA must refer an agreement between the payer and payee in a WA ex-nuptial case if the payee receives more than the base rate of Family Tax Benefit Part A to the Secretary of FaHCSIA. CSA can only accept these agreements if the Secretary decides that the agreement passes the 'reasonable action to obtain maintenance' test.

WA adoption of Assessment Act amendments from 1 January 2001

The following amendments applied to WA ex-nuptial cases from 1 January 2001.

- Child support for WA ex-nuptial cases is assessed in child support periods rather than child support years. A child support period may last up to 15 months.
- The assessments are based on taxable income for the most recent taxation year rather than taxable income for the financial year before last.
- The payee's disregarded income is based on the 'all employees average weekly earnings' figure rather than the usually higher average weekly earnings figure and extra amounts according to the age of the children were no longer added to it
- The payer's exempt income amount was increased to 110% of the unpartnered rate of social security pension relevant to the one payable for the child support period
- When the liable parent has relevant dependent children the exempt income amount was increased to 220% of the annual amount of the partnered rate of social security pension relevant to that payable

for the child support period.
- The minimum child support rate payable is $260, not nil, and will not be reduced below $260 per annum unless the person's total income in the first 12 months of a child support period is less than $260.
- A person could apply for a change of assessment if the child care costs they incurred were high and cost more than 5% of their child support income amount
- Senior case officers could not make a decision on a change of assessment application that the annual rate of child support in a case was to be reduced to nil.
- In calculating the amount payable in an assessment the payer's adjusted income is reduced by 50 cents for every dollar of the carer parent's income above the disregarded income amount
- Any supplementary income (exempt foreign income, net rental losses and reportable fringe benefits) is added back to the liable parent's to taxable income amounts
- When the parents share care of the children of a relationship, additional amounts are added to the liable parent's exempt income for any children in their sole, major or shared care
- CSA may refuse, review or amend a payer or payee's estimate of income.

New Child support assessments commencing 1 January 2001

CSA made a new child support assessment for every WA ex-nuptial case, which applied to a child support period starting on 1 January 2001.

CSA based the new child support assessment upon the parents' taxable income for 1999-2000 if the ATO had issued an assessment of taxable income for that year for either parent. If neither parent's 1999-2000 taxable income was available, CSA based the new assessment on the 1998-1999 taxable income for each parent inflated by the relevant child support inflation factor.

WA adoption of Assessment Act amendments from 9 December 2002

The *Child Support (Adoption of Laws) Amendment Act 2002 (WA)* commenced on 9 December 2002. It adopted amendments to the Assessment Act contained in several acts including the *Child Support Legislation Amendment Act (No. 2) 2000* and the *Child Support Legislation Amendment Act 2001.*

The following provisions of the Assessment Act apply to WA ex-nuptial cases from 9 December 2002:

- Reason 10 for change of assessment, earning additional income for the benefit of resident children.
- The exclusion of certain types of income specified by regulation (amenity allowances or gratuities paid to prisoners, disability support pensions paid under social security law and totally and permanently incapacitated paid to a veterans under Veterans' Affairs law) when considering an application for the minimum child support liability of $260 per annum to be reduced to nil.
- The repeal of the definition of *eligible carer* in section 5 and its replacement by section 7B. This means that in WA ex-nuptial cases a non-parent carer will not be considered an eligible carer if a parent or guardian of the child does not consent to that person providing care for the child.
- Either parent in WA ex-nuptial cases may now apply to a court for an order for departure from administrative assessment (section 116), or appeal against an incorrect assessment (section 110), or appeal against the acceptance or non-acceptance of a child support agreement (section 132) providing at least one of the parents has objected to CSA's decision and CSA has disallowed the objection or allowed it in whole or in part.

WA adoption of Assessment Act amendments from 1 August 2006

The *Family Legislation Amendment Act 2006 (WA)* included provisions to adopt amendments to the Assessment Act.

The following provisions apply to WA ex-nuptial cases from 1 August 2006

- The reduction of the maximum income amount used in a child support assessment from 2.5 times average weekly earnings (AWE) to 2.5 times all employees average weekly total earnings (EAWE).
- The increase in the minimum annual rate of child support from $260 to $320 (adjusted annually in accordance with the Consumer Price Index).

Changes limiting the circumstances in which an assessment can be increased on the basis of a parent's earning capacity.

WA adoption of Assessment Act amendments from 1 November 2007 and later dates

The *Child Support (Adoption of Laws) Amendment Act 2007 (WA)* adopted amendments to the Assessment Act contained in the:

- *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*;
- the *Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006*;
- the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Act 2006*;
- the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget and Other Measures) Act 2006*; and
- the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007*.

Amendments that apply to WA ex-nuptial cases from 1 November 2007

Amendments to the Assessment Act made by the *Child Support Legislation Amendment(Reform of the Child Support Scheme - New Formula and Other Measures) Act 2006* (Cth) now apply to cases involving WA ex-nuptial children. Those amendments, which apply to WA ex-nuptial children from 1 November 2007 and all other cases from 1 January 2007, are as follows:

- The Social Security Appeals Tribunal provides a process for parents who want a review of a CSA decision made under the Assessment Act or the Registration and Collection Act.
- A payee is able to apply directly to a court if CSA has refused their application for assessment because they were unable to satisfy CSA that the person named is a parent of the child or children.
- A court has increased powers to make orders staying a child support assessment or collection pending the determination of an objection, application for review, or appeal to a court.
- CSA is unable to make change of assessment decisions that affect a period more than 18 months earlier than the date of the application unless the court has granted leave. If a court grants leave it can specify a period for which an assessment can be changed of up to seven years prior to the application.

Amendments that apply to WA ex-nuptial cases from 1 January 2008

Amendments to the Assessment Act made by the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Act 2007 (Cth)* apply to cases involving WA ex-nuptial children. Those amendments, which apply to WA ex-nuptial children from 1 January 2008 and all other cases from 22 June 2007, are as follows:

- Some changes to the secrecy provisions including the following:
    - CSA can communicate protected information to persons as necessary to prevent a credible threat to the life, health or welfare of a person.
    - CSA can communicate protected information to brief the Minister in respect of a range of circumstances relating to the Minister's duties.
    - CSA can communicate protected information to a person who has the consent of the person to whom the information relates to obtain that information.
    - CSA can communicate protected information in specific circumstances relating to missing people and locating a relative or beneficiary of a deceased person.
    - A new offence for unauthorised disclosure of information.
- Removal of the restriction that CSA information gathering (under section 161) in respect of third parties is limited to financial information.
- Stay order provisions have been removed from the Assessment Act. All of the stay order provisions are located within the Registration and Collection Act regardless of whether the relevant proceeding

has commenced under the Assessment Act or the Registration and Collection Act.

All other provisions of the Assessment Act which came into effect on 1 January 2008 also came into effect for cases involving WA ex-nuptial children on the same date.

Amendments that apply to WA ex-nuptial cases from a later date

Provisions of the Assessment Act which will come into effect on 1 July 2008 will also come into effect for cases involving WA ex-nuptial children on the same date.

Version 1.6

Issued 1 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.4.4: Overseas-related Maintenance Obligations

Context

The legislation relating to overseas-related maintenance obligations applies to WA ex-nuptial cases.

Legislative References

Section 51 *Commonwealth of Australia Constitution Act*

Explanation

The Commonwealth has the Constitutional power to make laws to manage Australia's external affairs. This means that the Child Support legislation relating to Overseas-related maintenance obligations applies to WA ex-nuptial cases without any need for related Child Support legislation being adopted by the WA Parliament.

Version 1.2

Issued 3 August 2007

< Previous Next >

1.6.2: Australian child support assessments for overseas cases

Context

An Australian child support assessment can be made for cases where the payer or the payee and children are overseas if certain requirements are met.

Legislative References

Sections 12, 24, 25, 25A, 30A, 30B, 39, 54, 58A, 58B, 58C, 142, 162A, *Child Support (Assessment) Act 1989*

Section 18A, 81, 86, 90, *Child Support (Registration and Collection) Act 1988*

Regulations 5, 11C *Child Support (Assessment) Regulations 1989*

Regulation 2, *Child (Registration and Collection) Regulations 1988*

Explanation

New applications for child support assessments

Payer overseas; payee and children in Australia

A payee in Australia can apply for a child support assessment if the payer is a resident of a reciprocating jurisdiction on the day they make the application (section 25(2)(b)(ii) Assessment Act), except if it is one of the excluded jurisdictions (i.e. Brunei Darussalam, Cook Islands, Israel, Niue, Papua New Guinea, the Yukon Territory of Canada and Samoa (regulation 5). A payee must obtain a court order for child maintenance if the payer resides in an excluded jurisdiction.

A payer resident in a reciprocating jurisdiction (except if it is one of the excluded jurisdictions) can apply for a child support assessment if they are seeking to pay child support to a payee who is resident in Australia (section 25A(3)(b)). The application must be made either directly to the Registrar or through the overseas authority of the reciprocating jurisdiction (section 25A(4)).

Payee and children overseas; payer in Australia

A payee in a reciprocating jurisdiction can apply for a child support assessment if they are seeking child support from a payer who is a resident of Australia (section 25(2)(b)(ii)). The application must be made by the overseas authority on behalf of the payee or made by the payee and given to the Registrar by the overseas authority (section 25(4) Assessment Act). A payee resident in a reciprocating jurisdiction cannot apply directly to the Registrar. (See chapter 2.2 eligible child).

A payer in Australia can apply for a child support assessment if they are seeking to pay child support to a payee who is overseas. However, a payer cannot apply for a child support assessment for a child who is not present in Australia and is not an Australian citizen (section 24(1)(b) Assessment Act).

Refusal of application for a child support assessment

An application for a child support assessment made by either a payer or a payee may be refused if an

overseas liability is already registered for the same case and one of the parties is a resident of a reciprocating jurisdiction (section 30B Assessment Act).

CSA will exercise this discretion when the liability that is already registered was made in the jurisdiction in which the payee resides and it would be unreasonable to allow a child support assessment to override that liability.

Terminating events

Effect of a child support assessment on a registered overseas maintenance liability

CSA may have already registered an overseas maintenance liability for a particular payer, payee and child(ren). This overseas liability ceases to have effect if CSA subsequently makes a child support assessment for the same payer, payee and child(ren) and registers that assessment for collection (section 12(1)(g) Assessment Act). Any arrears payable under the previous liability are still payable (section 30AA(2) Registration & Collection Act).

Payee and child go overseas

A child support assessment ends when a child leaves Australia and is no longer an Australian citizen or ordinarily resident in Australia (section 12(1)(f) Assessment Act). However, the child support assessment continues if the child is living in a reciprocating jurisdiction (section 12(4A)(a) Assessment Act).

There is an exception when the payee is habitually resident in New Zealand. This is a terminating event and the child support assessment ends. (Section 150DA Assessment Act and Regulation 9A Assessment Regulations).

Payer goes overseas

A child support assessment ends when a payer ceases to be a resident of Australia or a reciprocating jurisdiction (section 12(3) & (3A) Assessment Act) (See chapter 1.5). A child support assessment also ends if the payer becomes a resident of one of the excluded jurisdictions (i.e. Brunei Darussalam, Cook Islands, Israel, Niue, Papua New Guinea, the Yukon Territory of Canada and Samoa) (section 12(3B)).

If a payer ceases to be a resident of Australia, but immediately becomes a resident of a reciprocating jurisdiction, the child support assessment does not cease (section 12(4A)(b)). If the child support assessment is affected by a court order made under the Assessment Act, that order continues to be in force (section 142(1A)).

Payer and payee both go overseas

A child support assessment ends when both the payer and payee cease to be residents of Australia (section 12(4B) Assessment Act.) This applies even if they both reside in a reciprocating jurisdiction.

Ongoing child support assessments

Income

CSA will include a parent's overseas income in their child support income when it makes or amends a child support assessment (section 58A Assessment Act). If a parent living overseas elects to have their child support assessment based upon an estimate of their income, they must include their overseas income in the estimate.

Default incomes

CSA can request a person to provide information about their income (section 162A Assessment Act). CSA can decide a default income amount for the person if it cannot ascertain their income from information or documents in its possession (section 58C).

Where a parent lives in a reciprocating jurisdiction CSA can request the overseas authority to provide income information about the parent, where they are able to do so (section 162A Assessment Act). CSA will amend the child support assessment once it receives this information (section 58B).

CSA takes account of overseas assessments when making a child support assessment

If a payer has an administrative assessment in a reciprocating jurisdiction for another child or children, CSA will take into account those children in working out the total number of children for whom the payer is liable to pay child support (section 54(1)(b) Assessment Act).

Giving notice and other communications

CSA can give notice or any other communication for a payer or payee in a reciprocating jurisdiction to the relevant overseas authority if that is considered desirable or appropriate (regulation 11C Assessment Regulations).

Period for notice

Relevant dependent child

If the payer is a resident of a reciprocating jurisdiction CSA can include a payer's relevant dependent child in a child support assessment from the date the child became the payer's relevant dependant if the payer notifies CSA within 90 days (instead of 28 days) of that event (section 39(3A) Assessment Act).

Similarly, if the payer is a resident of a reciprocating jurisdiction CSA can include a payer's relevant dependent child in a child support assessment from the date it sent the payer notice of the assessment if the payer notifies CSA within 90 days (instead of 28 days) of the notice (section 39(3A) Assessment Act).

Notice of specified events

If CSA gives a person in a reciprocating jurisdiction a written notice requiring them to advise when a specified event occurs, the person has 60 days from the event to advise CSA (section 162A(2) Assessment Act).

Notice requiring information

If CSA requires a person in a reciprocating jurisdiction to provide information, CSA must allow the person at least 28 days to do so (section 162A(5)).

Objections timeframes

If the person objecting is a resident of a reciprocating jurisdiction the period for a parent to object to a decision under the Assessment Act is extended to 90 days (instead of 28 days) (section 81(3) Registration & Collection Act). The person resident in Australia has 28 days to object to a decision.

Similarly, if the person responding to an objection is a resident of a reciprocating jurisdiction, they have 90 days (instead of 28 days) to provide a notice in response to an objection. (section 86(2) Registration & Collection Act.) The person resident in Australia has 28 days to respond to the objection.

SSAT appeal timeframes

If the person appealing is a resident of a reciprocating jurisdiction the period for a person to lodge an application for review is 90 days (instead of 28 days) (section 90(2)). The person resident in Australia has 28 days.

Version 1.5

Issued 27 July 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

1.6.4: Administering overseas maintenance liabilities

Context

Once CSA has registered an overseas maintenance liability for collection, it must administer the liability in the same way that it does for Australian child support assessments and orders. In most ways, CSA administers these cases in the same way as Australian Stage 1 liabilities, however there are some important differences.

Legislative References

Section 18A, 30AA, 37, 37B, 81, 86, 90 *Child Support (Registration and Collection) Act 1988*

Regulation 18 *Child Support (Registration and Collection) Regulations 1988*

Regulations 32, 36, 38 and 38A *Family Law Regulations 1984*

Family Law Act 1975

Explanation

Varying the register

CSA must vary the register to give effect to any changes to the liability, in the same way that it does for domestic cases (section 37).

Non-agency payments

A payer of an overseas registrable maintenance liability can ask CSA to credit non-agency payments, except **prescribed non-agency payments** (S71C(6)), in the same way as a payer in a domestic case (See chapter 5.3). However, non-agency payments are not available to a payer of an agency reimbursement liability (sections 71(3) and 71A(1A)). This includes a New Zealand assessment. New Zealand cannot credit non-agency payments against their liability.

Objection rights under the Registration and Collection Act and External review applications to the SSAT

A payer and payee in an overseas case (ie, a registrable maintenance liability under Section 18A) have the same objection and review rights as a payer and payee in a domestic case. The only difference is that a person who is a resident of a reciprocating jurisdiction has 90 days (instead of 28 days) to lodge their objection, respond to the other parent's objection or apply for a review of an objection decision to the Social Security Appeals Tribunal (SSAT) (Sections 81(3), 86(2A) and S90(2)). (See chapter 4.1 & 4.2)

Application for a low-income non-enforcement period

An Australian payer of an overseas child maintenance liability arising under a maintenance order made by, or a maintenance agreement registered by, a judicial authority of a reciprocating jurisdiction can apply for a low-income non-enforcement period (section 37B(2)). A payer of a maintenance assessment issued by a reciprocating jurisdiction or any overseas registered spousal liabilities cannot apply for a low-income non enforcement period. (See chapter 3.4)

Rule to avoid dual liabilities

If a registrable maintenance liability is registered and any time after that registration a subsequent liability is registered, the first liability ceases from when the subsequent liability is registered. This does not affect the collection of arrears, if any, for the first liability registered (section 30AA).

Varying an overseas maintenance liability

CSA cannot vary an overseas maintenance order or assessment. The following section explains what a parent can do to vary their overseas liability.

Applying to an Australian court

Applying to an overseas court

Applying for a child support assessment or a maintenance assessment

New Zealand assessment ends when payee becomes habitually resident in Australia

Applying to an Australian court

Either parent can apply to an Australian court exercising Family Law jurisdiction for an order varying, discharging, suspending or reviving (regulation 36 Family Law Act Regulations):

- an overseas maintenance order or agreement registered in an Australian court before 1 July 2000
- a registrable overseas maintenance liability defined under section 18A and registered with CSA for collection after 1 July 2000.
- an overseas maintenance entry liability.

The Secretary of the Attorney-General's Department can also apply on behalf of a parent.

The court will apply the *Family Law Act 1975* when dealing with the parent's application. If the court makes an order that varies the original order it will be a final order (regulation 38(2) Family Law Regulations). However, the Australian variation order is provisional if the original order was made in one of the following reciprocating jurisdictions (regulation 38(1) Family Law Regulations):

- Brunei
- Canadian Provinces and Territories mentioned in Schedule 2
- Territory of Christmas Island
- Territory of Cocos (Keeling) Islands
- Cook Islands
- Cyprus
- Fiji
- Gibraltar
- Hong Kong
- India
- Republic of Ireland
- Kenya
- Malawi
- Malaysia
- Malta
- Nauru
- New Zealand

- Papua New Guinea
- Sierra Leone
- Singapore
- South Africa
- Sri Lanka
- Tanzania
- Trinidad and
- Tobago
- United Kingdom
- including the Channel Islands mentioned in Schedule 2

A provisional order has no effect unless and until a court in the relevant reciprocating jurisdiction confirms it. If the overseas court confirms the provisional order (makes a final order) with or without modification, that final order has effect in Australia (regulation 38A(6) Family Law Regulations).

CSA will vary the register entry to give effect to a final court order, or a confirmed provisional order.

Applying to an overseas court

Parents can apply to a court in the country where the overseas parent resides for variation of an overseas order. Where the application is made directly to a court overseas, the applicant parent may apply to CSA for assistance in transmitting the application for variation (regulation 18 Registration and Collection Regulations).

A parent who has an original order made in the United States of America (USA) can seek a variation to their order in an Australian court, and CSA can give effect to that variation as a final order. However, the USA jurisdiction that made the original order may not recognise the Australian variation and if so, arrears will continue to accrue under the original order in the USA. For this reason, it may be preferable for a parent with an order from the USA to seek a variation in the jurisdiction that made the original order.

Applying for a child support assessment or a maintenance assessment

A parent who is eligible to apply for a child support assessment in Australia, or a maintenance assessment in a reciprocating jurisdiction can effectively vary their overseas court-ordered maintenance liability by applying for that assessment. An overseas court order ceases to have effect in Australia when CSA registers a child support assessment or an overseas maintenance assessment (section 30AA). The overseas court order would no longer be enforceable in Australia (except for any arrears for the period before the assessment). The order may remain enforceable in the issuing jurisdiction, However, the liable parent can make an application to a court in the issuing jurisdiction to have the order discharged and present evidence of payments made in satisfaction of the child support assessment.

An application for a child support assessment may be refused if an overseas liability is already registered for the same case and one of the parties is a resident of a reciprocating jurisdiction (section 30B Assessment Act).

CSA will exercise this discretion when the liability that is already registered was made in the jurisdiction in which the payee resides and it would be unreasonable to allow a child support assessment to override that liability.

New Zealand assessment ends when payee becomes habitually resident in Australia

---

Version 1.4

Issued 27 July 2007

< Previous Next >

2.1.1: Applications for assessment

Context

An eligible carer or a liable parent can apply to CSA for an administrative assessment of child support payable by the liable parent to the eligible carer for a child.

Legislative References

Sections 25, 25A, 27, 28 and 150A *Child Support (Assessment) Act 1989*

Regulation 12 *Child Support (Assessment) Regulations 1989*

Explanation

An eligible carer can apply to CSA for an administrative assessment of child support (a child support assessment) payable for a child by a person who is a parent of that child (section 25).

From 1 July 1999, a liable parent can apply for a child support assessment payable by them to a person who is an eligible carer of the child concerned.

CSA can specify the way in which an application for a child support assessment must be made (sections 27 and 150A). A person can make an application:

- In writing, by completing an 'Application for child support assessment' form or 'Application for child support assessment (paying parent)' form. The completed form can be lodged by mail, Facsimile, or personally at a CSA office, a Centrelink office or a Family Assistance Office. The forms are available from CSA offices or by calling 131 272. Printable versions of the forms are also available on CSA website at www.csa.gov.au
- Electronically, by completing and lodging the forms on CSA website at www.csa.gov.au
- By telephoning CSA on 131272 to make an application over the telephone.

A separate application is not needed for each child (section 28(1)). An application for more than one child is treated as if it were separate applications for each child.

If an eligible carer makes an application seeking payment from more than one person, CSA can treat that application as if it contained separate applications for child support for each child from each person (section 28(2)).

Version 1.0

Issued 1 October 2002

< Previous Next >

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

2.3.2: When do child support periods start?

Context

CSA must make new assessments at particular times. A new assessment starts a new child support period.

Legislative References

Sections 7A, 31, 34A, 34B, 34C and 93 *Child Support (Assessment) Act 1989*.

Explanation

CSA must make new assessments at particular times during a case. These assessments will apply to new child support periods that start at the times listed below.

Accepting an application

Accepting an agreement that starts a new case

Accepting an agreement on an existing case

CSA makes an assessment when the Australian Taxation Office issues a tax assessment for one of the parents

After the end of a child support period

Accepting an application

CSA must make an assessment as quickly as practicable after it has accepted a new application for child support (section 31(2)). The child support period for this assessment starts on the day that the parent made the application for child support (section7A(2)(a)).

There is an exception for an application for a new child in an existing case. In these cases, CSA will amend the existing amendment to take account of the new child. It will not make a new assessment that applies to a new child support period.

Accepting an agreement that starts a new case

CSA must make an assessment as quickly as practicable after it has accepted an agreement that starts a new case (section 93(2)). The assessment will apply to a child support period that starts on the day that the liability to pay child support starts (section 7A(2)(b)). This date will depend upon the date of the application for acceptance, the date of the agreement, and the terms of the agreement (section 93(1)(g)). This is explained in chapter 2.5 Agreements heading 'Date of effect where child support is not already payable'.

Accepting an agreement on an existing case

CSA must make a new assessment immediately after it accepts an agreement in an existing case if the agreement affects the rate of child support payable (section 34B). The assessment will apply to a child support period that starts on the day that the rate of child support changes in accordance with the agreement (section 7A(2)(c)).

CSA makes an assessment when the ATO issues a tax assessment for one of the parents

CSA must make a new assessment when a tax assessment issues for either parent for the latest financial year that ended during the existing child support period (exceptions detailed below)(section 34A). CSA must do this as soon as it is practicable after the ATO issues the assessment (section 34A(2)).

CSA has a business rule that it is practicable to make an assessment in the month that the tax assessment issues if it issues on or before the 15th of the month. If the tax assessment issues after the 15th CSA will make the assessment in the following month.

CSA's new assessment applies to a child support period that starts on the first day of the month following the month in which it was made (section 7A(1)(d)).

Exceptions - tax assessments which will not require CSA to make a new assessment

CSA may not be required to make a new child support assessment when the ATO issues a tax assessment for the latest year of income that ended during a child support period in the following circumstances:

- If it is the payee's tax assessment and the payee's income could not affect the rate of child support
- If the other parent's tax assessment for that year has already started a new child support period
- If the assessment is based on a change of assessment decision, court order or agreement
- If the current child support period is ending in the same month

Payee's tax assessment

The first exception is where the tax assessment is for a payee and it could not affect the rate of child support payable because it is below the exempt or disregarded income levels, or because the payee is not a parent of the child (section 34A(3)).

The other parent's tax assessment for that year has already started a new child support period

The second exception is where other parent's tax assessment for that year has already started a new child support period. CSA will have used a default income when it made the assessment for the parent whose tax assessment had not yet issued.

When the parent's tax assessment subsequently issues for the same year it does not trigger a new assessment. The tax assessment is not for a financial year that ended during the current child support period. CSA will amend the existing assessment by replacing the default income. The assessment continues and applies to the same child support period.

Assessment based on a change of assessment decision, court order or agreement

The third exception is where a departure decision, court order or agreement is in place that does not use the parent's taxable income to work out the rate of child support (section 34A(4)).

If the agreement, departure decision or court order ceases at some time during the existing child support period, CSA is required to make a new assessment when the tax assessment will affect the rate of child support. CSA makes a new assessment in the last calendar month of the agreement, departure decision, or court order to apply to a period that starts on the first day of the following month (section 34A(2)).

Most agreements, court orders and departure decision will end on the last day of the month. If not, the assessment will revert to the formula using the last relevant year of income for the current child support period until the last day of the month. CSA's new assessment using the later year of income will apply to a period that commences on the first day of the month after CSA makes that assessment (section 34A(2)).

Current child support period ending in the same month

The fourth exception is where the existing child support period will finish before the end of the month in which the tax assessment issues. In these cases, a new child support period starts on the day after the end of the current child support period, rather than the first day of the next month (section 34A(5)).

Tax assessments that issue in June for the previous financial year

CSA will make a new child support assessment whenever the ATO issues a tax assessment that triggers a new child support period. The tax assessment will usually provide CSA with the parent's child support income amount for the last relevant year of income for the new child support period. The exception is where CSA makes a new child support assessment in June to apply to a child support period that starts on 1 July (e.g. when ATO issues a tax assessment for 2000-2001 in June 2002). The last relevant year of income for that new child support period will be the financial year *after* the year of the tax assessment.

For these cases, CSA will make a new child support assessment based upon a default child support income

amount for the last relevant year of income for both parents. When the ATO issues each parent's tax assessment for the last relevant year of income, CSA will amend the child support assessment from the start of the child support period (replacing default income with actual income).

Can CSA start a child support period retrospectively under section 34A?

If CSA missed making a new assessment when a parent's tax assessment issued, it cannot make a retrospective assessment (section 34A(2)). CSA will make a new assessment at the earliest appropriate time. The new assessment will have prospective effect from the first day of the following month. If a new financial year has started before CSA discovers the error, it will not be able to make a new assessment under section 34A.

After the end of a child support period

CSA must make an assessment before the start of a new child support period if it has not already made an assessment for one of the reasons listed above. If CSA has not made an assessment before the start of a new child support period it must do so as soon as practicable after it starts (section 34C). The child support period for this kind of assessment will start on the first day after the day the earlier child support period ended (section 7A(2)(d)).

Version 1.0

Issued 1 October 2002

< Previous Next >

2.3.3: When do child support periods end?

Context

When CSA makes a new assessment, the old assessment and child support period will end. If a child support period ends CSA must make a new assessment to start immediately after the child support period that has ended.

Legislative References

Section 7A *Child Support (Assessment) Act 1989*.

Explanation

Child support periods do not overlap. An existing period always ends the day before a new one starts.

A child support period will end at whichever of the following times occurs soonest after the start of the period (section 7A(3)):

- End of the month in which CSA makes a new assessment because a tax assessment issues
- The day before the start of an agreement that affects the rate of child support payable
- Fifteen months after the start of the child support period

End of the month in which CSA makes a new assessment because a tax assessment issues

When CSA makes a new assessment because a tax assessment issued for one of the parents, the current child support period ends on the last day of the month in which CSA makes the assessment (section 7A(3)(b)). The new assessment applies to a child support period that starts on the first day of the following month.

The day before the start of an agreement that affects the rate of child support payable

A child support period in an existing case will end on the day before the rate of child support changes or commences to be payable because CSA has accepted an agreement (sections 7A(3)(c) and (d)).

Fifteen months after the start of the child support period

In all other cases, the child support period will end 15 months after the start of the period. A child support period cannot be longer than 15 months (section 7A(3)(a)).

Version 1.0

Issued 1 October 2002

< Previous Next >

2.4.7: Payee has claimed child support from both the child's parents

Context

If a non-parent carer cares for a child, both parents can be liable to pay child support to that non-parent carer.

Legislative References

Subdivision F of Division 2 of Part 5, sections 50, 51 and 52 *Child Support (Assessment) Act 1989*

Explanation

If a non-parent carer applies for a child support assessment payable by only one of the parents the assessment is calculated according to the basic formula and the modified formula for payers with high income, if applicable (section 51). The income of a non-parent carer is not taken into account.

If a non-parent carer applies for a child support assessment payable by both parents, the combined liability of both parents is capped at 1.5 times the maximum possible child support liability (section 52 (1)).

The maximum possible child support liability is the annual rate of child support that would be payable in relation to that day by a hypothetical liable parent (section 52(2)) if:

- the number of children for whom the person was a liable parent were the number of children for whom the 2 relevant parents are both liable parents and not eligible carers; and
- the parent's child support income amount were 2.5 times the yearly equivalent of the relevant all employees average weekly total earnings (EAWE) amount for the child support period (the income cap); and
- the parent did not have a relevant dependent child; and
- the carer entitled to child support was not a parent of any of the children for whom child support was payable.

Example

M and F have a child, A who lives with G. M has a child support income of $40,000. F has a child support income of $30,000. The child support period for both parents started on 1 September 2006. The calculations are:

Maximum possible child support liability	= ($104,702 - $13,983) ´ 18% = $16,329
Rate of child support payable by M	= ($40,000 - $13,983) ´ 18% = $4,683
Rate of child support payable by F	= ($30,000 - $13,983) x 18% = $2,883
Combined child support payable	= $4,683 + $2,883 = $7,556 (less than 1.5 times the maximum possible child support liability)

Example

M and F have one child, A, who lives with G. F has a relevant dependent child, aged 3, from

another relationship. M has a child support income of $140,000. F has a child support income of $90,000. The child support period for both parents started on 1 September 2006. The calculations are:

Maximum possible child support liability	= ($104,702 - $13,983) ´ 18% = $16,329
Maximum combined liability for M and F	= 1.5 x $16,329 = $24,494
Rate of child support for M	= ($104,702 - $13,983) ´ 18% = $16,329
Rate of child support for F	= ($90,000 - $25,773) ´ 18% = $11,561
Combined child support payable	= $16,329 + $11,561 = $27,890 (more than 1.5 times the maximum possible child support liability).

Therefore M and F are both liable to pay G a proportion of $24,494

M's annual rate of child support:	= $16,329/$27,890 ´ $24,494 = $14,341.
F's annual rate of child support:	= $11,561/$27,890 ´ $24,494 = $10,153.

Frequently asked questions

Can a non-parent carer choose to apply for child support from only one of a child's parents?
Yes. The carer can seek child support from one or both parents.

Version 1.5

Issued 1 July 2006

< Previous Next >

2.5.4: Effect of a child support agreement

Context

The effect of a child support agreement depends on whether child support is already payable and the kind of provisions it contains.

Legislative References

Sections 34B, 93, 94 and 95 *Child Support (Assessment) Act 1989*

Explanation

Date of effect where child support is not already payable

When CSA accepts an agreement in a case where child support is not already payable, CSA will make an administrative assessment of child support (section 93(2)). The child support assessment will start from a day determined under section 93(1):

- if the application for acceptance was made to CSA within 28 days of making the agreement and the agreement says when child support starts to be payable, the child support assessment will start on the day specified in the agreement (but not before 1 October 1989)
- if the application for acceptance was made to CSA within 28 days of making the agreement and the agreement does not say when child support starts to be payable, the child support assessment will start on the day the agreement was made; or
- if the application for acceptance was made more than 28 days after the agreement, the child support assessment will start on the day the application was made.

Date of effect where child support is already payable

Where child support is already payable and the agreement does not affect the annual rate of child support CSA will take whatever action is necessary to give effect to the agreement (section 94).

Example

> M agrees to pay C's school fees at XYZ college. These payments are in addition to the child support payable under the assessment.

Where child support is already payable and the agreement affects the annual rate of child support, a new child support period commences and CSA will make a new administrative assessment to give effect to the agreement (section 34B).

The agreement has effect:

- on the date the agreement specifies (but not before 1 October 1989 or the start date of the liability), or
- if the agreement does not specify a date, the date the agreement was entered into (but not before the start date of the liability).

Effect of certain provisions

Once a child support agreement is accepted by CSA the provisions have effect as though they were court orders (section 95).

If an agreement includes:

- a provision for periodic payments to a parent,

- a provision varying a provision of that kind, or
- a provision agreeing on any other matter that a court can include in an order for a change to the assessment (See chapter 4.3 heading Application for a change to a child support assessment in special circumstances (section 123)),

the provision has the same effect on the child support assessment as a court order made by consent (section 95(2)) (See chapter 4.3). This means CSA's child support assessment must take into account those provisions in the agreement.

If an agreement includes a provision for one parent to provide child support to the other parent otherwise than in the form of periodic amounts paid to the other parent:

- the provision has effect, for the purposes of making an assessment under Part 5, as if it is a consent order under section 124, and
- if the agreement is registered in a court with jurisdiction under the Family Law Act, the court can enforce the provision as if it were an order made under the Family Law Act (section 95(3)).

If an agreement includes a provision stating:

- whether a non-periodic amount is to be credited against a parent's child support liability under an assessment, and
- stating the annual value or specifying a percentage by which the child support payable should be reduced,

those statements have effect as if they were in a consent order for child support to be in a form other than periodic amounts. This means that CSA must amend the child support assessment to give effect to those crediting provisions (section 127), and the 25% rule may apply if the payee is in receipt of an income tested pension, benefit or allowance (section 128).

Version 1.1

Issued 18 February 2003

< Previous Next >

2.7.1: Court orders that vary assessments

Context

A parent can apply directly to a court if dissatisfied with a limited number of CSA decisions under the Assessment Act. A parent may also apply to a court if they believe that the Social Security Appeals Tribunal has made an error of law in its review of a CSA decision. Courts can make a range of orders which affect a child support assessment.

Legislative References

Part 7 *Child Support (Assessment) Act 1989*

Part VIII *Child Support (Registration and Collection) Act 1988*

Explanation

A parent can apply directly to a court if they are dissatisfied with a limited number of CSA decisions under the Assessment Act. However, for most decisions it is necessary for CSA to have dealt with an objection about the decision and for the SSAT to have reviewed the objection decision before the parent can make their court application. In those cases, the parent can only appeal to a court if they think that there has been an error of law. See Chapter 4.2 for information about review by the SSAT.

Courts can make a range of orders which affect a child support assessment.

The court can make other orders affecting a child support case including stay orders.

For more information about the types of orders the court can make, see chapter 4.3 Court applications, appeals and orders.

Version 1.2

< Previous Next >

2.7.2: Implementing court orders made under the Assessment Act

Context

When CSA is notified of an order made under the child support legislation it must take any action necessary to amend the child support assessment to give effect to the order. This section explains how CSA gives effect to specific kinds of court orders.

Legislative References

Sections 98A, 108, 112, 119, 127, 134, 138 and 142 *Child Support (Assessment) Act 1989*

Section 80, Part VIIIB *Child Support (Registration and Collection) Act 1988*

Explanation

When a court's decision under the child support legislation becomes final, CSA must take any action necessary to amend the child support assessment to give effect to the order. However, CSA's policy is to give effect to a court order as soon as possible after it is notified of the provisions of the court order, without waiting for the order to become final. If the order is changed following an appeal, CSA will amend the child support assessment again to reflect the terms of the later order.

When court orders become final

An order of a single Judge or Magistrate becomes final at the end of the period allowed by the court rules for appealing against that to a higher court. This is usually 28 days. An order of the full bench of the Family Court will become final 30 days after it is made unless an application is made to the High Court for special leave to appeal.

This section explains how CSA gives effect to specific kinds of court orders, including

- orders for a periodic amount
- orders for a nil assessment
- orders to reduce arrears
- orders varying, setting aside or nullifying an earlier order
- orders CSA cannot implement
- severability of clauses

The section also discusses

- end dates of orders to change the assessment
- the effect of an agreement on an order to change the assessment
- the effect of a terminating event on an order to change the assessment
- setting a rate of child support for more than one child
- unemployment clauses
- self-supporting children
- children in full-time education

Orders for a periodic amount

An order may say that a parent must pay a periodic amount but not state that whether the order is made under the Assessment Act or if it is an order for a change to the assessment. CSA will interpret such orders as orders to change the assessment unless there is an indication to the contrary. If there is a heading on the order that suggests it is made under the provisions of the Family Law Act the case officer should obtain a

copy of the application to check whether the applicant applied for a departure order.

CSA will give effect to an order for a change to the assessment even if it has not made a decision on an application for change of assessment in the case and/or a decision on an objection to a decision to refuse or change the assessment. CSA will accept, without further investigation, that the court has acted correctly in making the order (unless there is any further order stating that the order is invalid or cannot be enforced). The court may have been considering other matters such as a property settlement and so it was not necessary for the parent concerned to seek a departure from the assessments by making an application to CSA or to object to an earlier decision under Part 6A of the Assessment Act.

Orders reducing the assessment to nil

CSA cannot make a change of assessment decision which has the effect of reducing the annual rate of child support below the minimum annual rate of child support (section 98A). However, the court may make such orders and CSA will give effect to them (section 66B).

An order to reduce arrears under the Assessment Act

A departure order or agreement may purport to discharge arrears where an assessment has been made under the Assessment Act. The Child Support legislation does not expressly provide for arrears to be discharged but CSA will give effect to these orders and agreements where possible by varying the rate of child support for a specified period. To avoid any uncertainty a departure order or agreement which seeks to discharge arrears should set the rate of child support for the period equal to the amount which has already been paid.

Orders varying, setting aside or nullifying a particular order

The Assessment Act does not provide for a parent to apply to have a previous court order varied or set aside. However, the same effect can be obtained by applying for a change to the assessment. If a court makes such an order CSA will interpret it to be an order to change the child support assessment and make appropriate amendments to the assessment.

If a court makes an order that nullifies an earlier order this means that the earlier order should not have been made and has no legal effect. CSA will amend the assessment as if the earlier order had not been made.

Orders CSA cannot implement

If CSA cannot give effect to an order it must advise the parents and, if appropriate, their legal representatives. They must also be advised that they have the right to object under section 80 of the Registration and Collection Act if they consider that the particulars of their assessment are incorrect because CSA did not give effect to the order.

Severability of clauses in an order

An agreement or court order that contains clauses that can be accepted or registered under the Child Support legislation may also contain clauses that cannot be accepted or registered under the legislation. The clauses that could normally be registered or accepted cannot be registered or accepted if doing so, without registering the other clauses, would change their meaning or change the essential nature of the order or agreement. They are said to be 'not severable' from the other clauses and the application for acceptance or registration of the entire order or agreement must be refused.

CSA will advise both parents if there are clauses which cannot be accepted or registered and discuss alternative options.

End dates of orders to change the assessment

An order changing the assessment has effect until:

- a terminating event occurs (section 142)
- a further departure order is made, or
- the end date or occurrence of an event specified in the order.

Effect of an agreement on an order to change the assessment

When CSA accepts a child support agreement, that agreement has the same effect as a new court order and

can replace or otherwise effect an existing court order.

Terminating events and change of assessment orders

A terminating event may happen in relation to all or some of the children covered by the assessment subject to a court order that changes the assessment. The order ceases to be in force as of the date of the terminating event (section 142 of the Assessment Act; section 111H of the Registration and Collection Act). The order will remain in force for any child not affected by the terminating event.

If a payee reapplies for an administrative assessment after a terminating event (for example, because a child who had left their care later returns to their care) CSA will use the formula and not the departure order when it makes a new assessment for the child for whom the assessment ended.

Where a departure order is in force that covers only some of the children of the relationship, or where the order has ceased to be in force for some of the children, CSA will make a 'mixed assessment'. Some of the children will be assessed in accordance with the departure order and others in accordance with the child support formula, as appropriate.

Setting a rate of child support for more than one child

Ideally, a court order that sets a rate of child support for more than one child will state how much is payable for each of the children. In the absence of such a statement CSA cannot divide the amount between the children. CSA's assessment will continue to show the full amount payable under the order when a terminating event happens in relation to one or more of the children.

Unemployment clauses

Court orders and agreements can suspend or reduce the liability when a parent is unemployed. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to try to obtain agreement about the intention of the clause. If the parents are unable to agree on the intention of the clause CSA will take the following issues into account when it interprets the court order.

For the liability to be varied when a parent becomes unemployed CSA must be able to determine the person's employment status. CSA will accept that a parent is unemployed if they receive a benefit or pension from Centrelink, in the absence of any evidence to the contrary. Where the parent does not receive benefit or pension, CSA will consider statements made by the parent and documentary evidence such as a certificate of separation.

Many court orders and agreements allow for a reduced liability during periods when a parent is 'in receipt of unemployment benefits'. A difficulty arises when a parent is not employed but is not receiving an unemployment benefit, or is receiving another type of benefit. A broad interpretation will be given to the term 'unemployment benefits'. CSA may apply such a clause where the person is receiving a Centrelink benefit or pension as a result of not being in employment (e.g. Disability Support pension or Sickness Allowance). However, if a parent is receiving benefits but their employment hasn't been terminated the parent is still employed.

A parent may be unable to work because of a work-related injury, and receive periodic compensation payments. CSA will determine if the parent is still employed by their employer. If the employment contract has been terminated CSA will accept that the person is 'unemployed' despite being in receipt of payments which may be greater than those payable to unemployed welfare beneficiaries.

A court can make an order that varied a parent's liability in a current period of unemployment, or one that applies during any period of unemployment.

Example

> 'The amount payable is to be reduced to $10 per week until F gains full-time employment' applies to F's current period of unemployment.
>
> 'The amount payable is to be reduced to $10 per week during periods when F is not in full-time employment' applies whenever F is unemployed after the date of the order.

Self-supporting children

Orders and agreements sometimes contain a provision providing for a reduction in child support payable if

the child is self-supporting. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to obtain agreement about the intention of the clause if possible. If the parents are unable to agree on the intention of the clause CSA will interpret the clause in the following way.

CSA must be satisfied that the child is, in fact, supporting themself. CSA will not consider whether or not the child is capable of being self-supporting or should be self-supporting (although this may provide a reason for a change of assessment in appropriate cases).

In determining whether a child is self-supporting CSA will determine the child's actual income and whether the child is paying for their basic living expenses without financial support from another person. Basic living expenses include accommodation, food, household utilities and transport costs. CSA will disregard social security payments the child is receiving except where the child is not living with the payee. If the child is also making lifestyle choices which would not be available without an independent source of income (for example, buying a car), the child is more likely to be self supporting.

If the child is living away from home CSA will consider whether the payee continues to have care and control of the child or whether the child is living independently from the payee and meeting their own costs. CSA will consider whether there has been a terminating event.

If the child continues to live with the payee, they will be self supporting if they pay a reasonable contribution towards household expenses including accommodation, utilities and food and groceries or if they pay board equal to this amount to the payee. If the child is living with the payee but is not contributing towards those household expenses or is making a nominal contribution only CSA will find that the child is not self-supporting.

Children in full-time education

Orders sometimes state that they are to operate until a child ceases to be in full-time education or until they finish a particular level of education such as secondary schooling. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to try to obtain agreement about the intention of the clause. If the parents are unable to agree on the intention of the clause CSA will consider the following issues when it interprets the clause.

Some institutions such as TAFE offer a range of courses from secondary education to vocational training and higher education courses. Tertiary education involves a distinct qualification , a certificate, diploma or degree, rather than matriculation or vocational training. CSA will ask for evidence from the payee about the child's student status. If the child is still at school CSA will find that the child is in full-time education.

If the child has finished school and is studying at an institution that considers the child as a full-time student, CSA will generally accept that the child is in full-time education.

Version 1.2

Issued 3 August 2007

< Previous Next >

2.8.7: Electing to end an assessment

Context

A payee is able to end an assessment for a child by electing to end the liability from a specified date. However, Centrelink must approve the election if the payee is entitled to receive Family Tax Benefit, Part A, at more than the base rate.

Legislative References

Sections 151 and 151A *Child Support (Assessment) Act 1989*

Explanation

A payee can elect to end an assessment for a child from a specified date (section 151).

If the payee is entitled to receive FTB Part A at more than the base rate, the election has no effect until it is approved by the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (section 151(4)). The secretary has delegated the power to approve elections to officers in Centrelink. CSA must advise Centrelink of the payee's election as soon as it is practicable (section 151A(1)).

Centrelink has to decide whether, if the payee's election is accepted, the payee will have has taken 'reasonable action to obtain maintenance' for the child (section 151A(2), (3) and (4)).

Centrelink must advise CSA of its decision (section 151A(5)). If Centrelink decides not to approve the election it has to advise the payee in writing (section 151A(6)). The payer and payee can both seek a review of Centrelink's decision to refuse to approve an election to end an assessment. CSA will refer customers dissatisfied with Centrelink's decision to Centrelink to pursue their review rights.

By specifying the date on which to end an assessment, a payee can effectively choose to discharge any amount unpaid. However, when an assessment is ended on a certain date any assessment before that date remains in force. If CSA amends the assessment(s) that apply to any of the days before the date the payee specified, this may result in an overpayment or underpayment.

A payee cannot reverse their election to end an assessment. However, the payer and payee are both entitled to make a new application for assessment.

Version 1.3

Issued 31 January 2007

< Previous Next >

Department of Foreign Affairs and Trade

Canberra

Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (The Hague, 2 October 1973)

Entry into force Generally: 1 August 1976

Entry into force for Australia: 1 February 2002

Australian Treaty Series

[2002] ATS 2

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS

(The Hague, 2 October 1973)

THE STATES SIGNATORY TO THIS CONVENTION,

DESIRING to establish common provisions to govern the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of adults,

DESIRING to coordinate these provisions and those of the Convention of 15 April 1958 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations in respect of Children,

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions-

Chapter I

SCOPE OF THE CONVENTION

Article 1

This Convention shall apply to a decision rendered by a judicial or administrative authority in a Contracting State in respect of a maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate, between-

5. a maintenance creditor and a maintenance debtor; or
6. a maintenance debtor and a public body which claims reimbursement of benefits given to a maintenance creditor.

It shall also apply to a settlement made by or before such an authority ('transaction') in respect of the said obligations and between the same parties (hereafter referred to as a 'settlement').

Article 2

This Convention shall apply to a decision or settlement however described.

It shall also apply to a decision or settlement modifying a previous decision or settlement, even in the case where this originates from a non-Contracting State.

It shall apply irrespective of the international or internal character of the maintenance claim and whatever may be the nationality or habitual residence of the parties.

Article 3

If a decision or settlement does not relate solely to a maintenance obligation, the effect of the Convention is limited to the parts of the decision or settlement which concern maintenance obligations.

Chapter II

CONDITIONS FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 4

A decision rendered in a Contracting State shall be recognised or enforced in another Contracting State-

7. if it was rendered by an authority considered to have jurisdiction under Article 7 or 8; and
8. if it is no longer subject to ordinary forms of review in the State of origin.

Provisionally enforceable decisions and provisional measures shall, although subject to ordinary forms of review, be recognised or enforced in the State addressed if similar decisions may be rendered and enforced in that State.

Article 5

Recognition or enforcement of a decision may, however, be refused-

1. if recognition or enforcement of the decision is manifestly incompatible with the public policy (ordre public) of the State addressed; or
2. if the decision was obtained by fraud in connection with a matter of procedure; or
3. if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted; or
4. if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

Article 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings.

Article 7

An authority in the State of origin shall be considered to have jurisdiction for the purposes of this Convention-

3. if either the maintenance debtor or the maintenance creditor had his habitual residence in the State of origin at the time when the proceedings were instituted; or
4. if the maintenance debtor and the maintenance creditor were nationals of the State of origin at the time when the proceedings were instituted; or
5. if the defendant had submitted to the jurisdiction of the authority, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

Article 8

Without prejudice to the provisions of Article 7, the authority of a Contracting State which has given judgment on a maintenance claim shall be considered to have jurisdiction for

the purposes of this Convention if the maintenance is due by reason of a divorce or a legal separation, or a declaration that a marriage is void or annulled, obtained from an authority of that State recognised as having jurisdiction in that matter, according to the law of the State addressed.

Article 9

The authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 10

If a decision deals with several issues in an application for maintenance and if recognition or enforcement cannot be granted for the whole of the decision, the authority of the State addressed shall apply this Convention to that part of the decision which can be recognised or enforced.

Article 11

If a decision provided for the periodical payment of maintenance, enforcement shall be granted in respect of payments already due and in respect of future payments.

Article 12

There shall be no review by the authority of the State addressed of the merits of a decision, unless this Convention otherwise provides.

Chapter III

PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 13

The procedure for the recognition or enforcement of a decision shall be governed by the law of the State addressed, unless this Convention otherwise provides.

Article 14

Partial recognition or enforcement of a decision can always be applied for.

Article 15

A maintenance creditor, who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

Article 16

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the proceedings to which the Convention refers.

Article 17

The party seeking recognition or applying for enforcement of a decision shall furnish-

1. a complete and true copy of the decision;
2. any document necessary to prove that the decision is no longer subject to the ordinary forms of review in the State of origin and, where necessary, that it is enforceable;
3. if the decision was rendered by default, the original or a certified true copy of any document required to prove that the notice of the institution of proceedings, including notice of the substance of the claim, has been properly served on the defaulting party according to the law of the State of origin;
4. where appropriate, any document necessary to prove that he obtained legal aid or exemption from cost or expenses in the State of origin;
5. a translation, certified as true, of the abovementioned documents unless the authority of the State addressed dispenses with such translation.

If there is a failure to produce the documents mentioned above or if the contents of the decision do not permit the authority of the State addressed to verify whether the conditions of this Convention have been fulfilled, the authority shall allow a specified period of time for the production of the necessary documents.

No legalisation or other like formality may be required.

Chapter IV

ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES

Article 18

A decision rendered against a maintenance debtor on the application of a public body which claims reimbursement of benefits provided for the maintenance creditor shall be recognised and enforced in accordance with this Convention-

1. if reimbursement can be obtained by the public body under the law to which it is subject; and
2. if the existence of a maintenance obligation between the creditor and the debtor is provided for by the internal law applicable under the rules of private international law of the State addressed.

Article 19

A public body may seek recognition or claim enforcement of a decision rendered between a maintenance creditor and maintenance debtor to the extent of the benefits provided for the creditor if it is entitled ipso jure, under the law to which it is subject, to seek recognition or claim enforcement of the decision in place of the creditor.

Article 20

Without prejudice to the provisions of Article 17, the public body seeking recognition or claiming enforcement of a decision shall furnish any document necessary to prove that it fulfils the conditions of subparagraph 1, of Article 18 or Article 19, and that benefits have been provided for the maintenance creditor.

Chapter V

SETTLEMENTS

Article 21

A settlement which is enforceable in the State of origin shall be recognised and enforced subject to the same conditions as a decision so far as such conditions are applicable to it.

Chapter VI

MISCELLANEOUS PROVISIONS

Article 22

A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover costs and expenses in respect of any claim under this Convention.

Article 23

This Convention shall not restrict the application of an international instrument in force between the state of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.

Article 24

This Convention shall apply irrespective of the date on which a decision was rendered.

Where a decision has been rendered prior to the entry into force of the Convention between the State of origin and the State addressed, it shall be enforced in the latter State only for payments falling due after such entry into force.

Article 25

Any Contracting State may, at any time, declare that the provisions of this Convention will be extended, in relation to other States making a declaration under this Article, to an official deed (acte authentique) drawn up by or before an authority or public official and directly enforceable in the State of origin insofar as these provisions can be applied to such deeds.

Article 26

Any Contracting State may, in accordance with Article 34, reserve the right not to recognise or enforce-

1. a decision or settlement insofar as it relates to a period of time after a maintenance creditor attains the age of twenty-one years or marries, except when the creditor is or was the spouse of the maintenance debtor;
2. a decision or settlement in respect of maintenance obligations

   a. between persons related collaterally;

   b. between persons related by affinity;

3. a decision or settlement unless it provides for the periodical payment of maintenance.

A Contracting State which has made a reservation shall not be entitled to claim the application of this Convention to such decisions or settlements as are excluded by its reservation.

Article 27

If a Contracting State has, in matters of maintenance obligations, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referred to the legal system which its law designates as applicable to a particular category of persons.

Article 28

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions-

1. any reference to the law or procedure or authority of the State of origin shall be construed as referring to the law or procedure or authority of the territorial unit in which the decision was rendered;
2. any reference to the law or procedure or authority of the State addressed shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought;
3. any reference made in the application of subparagraph 1 or 2 to the law or procedure of the State of origin or to the law or procedure of the State addressed shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;
4. any reference to the habitual residence of the maintenance creditor or the maintenance debtor in the State of origin shall be construed as referring to his habitual residence in the territorial unit in which the decision was rendered.

Any Contracting State may, at any time, declare that it will not apply any one or more of the foregoing rules to one or more of the provisions of this Convention.

Article 29

This Convention shall replace, as regards the States who are Parties to it, the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations in respect of Children, concluded at The Hague on 15 April 1958.

Chapter VII

FINAL CLAUSES

Article 30

This Convention shall be open for signature by the States which were Members of The Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 31

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International

Court of Justice may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 35.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in subparagraph 3 of Article 37. Such an objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 32

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension shall have effect as regards the relations between the Contracting States which have not raised an objection to the extension in the twelve months after the receipt of the notification referred to in subparagraph 4 of Article 37 and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made.

Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension.

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 33

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the territorial unit to which the Convention applies.

Other Contracting States may decline to recognise a maintenance decision if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the decision was rendered.

Article 34

Any State may, not later than the moment of its ratification, acceptance, approval or accession, make one or more of the reservations referred to in Article 26. No other reservation shall be permitted.

Any State may also, when notifying an extension of the Convention in accordance with Article 32, make one or more of the said reservations applicable to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 35

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 30.

Thereafter the Convention shall enter into force

- for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;
- for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 31;[1]
- for a territory to which the Convention has been extended in conformity with Article 32, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 36

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 35, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 37

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 31, of the following-

1. the signatures and ratifications, acceptances and approvals referred to in Article 30;
2. the date on which this Convention enters into force in accordance with Article 35;
3. the accessions referred to in Article 31 and the dates on which they take effect;
4. the extensions referred to in Article 32 and dates on which they take effect;
5. the objections raised to accessions and extensions referred to in Articles 31 and 32;
6. the declarations referred to in Articles 25 and 32;
7. the denunciations referred to in Article 36;

8. the reservations referred to in Articles 26 and 34 and the withdrawals referred to in Article 34.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the 2nd day of October 1973, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States Members of The Hague Conference on Private International Law at the date of its Twelfth Session.

[Signatures not reproduced here.]

[1] Instrument of accession deposited for Australia on 20 October 2000. Entry into force for Australia

on 1 February 2002

Department of Foreign Affairs and Trade

Canberra

Agreement Between The Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations.

Canberra, 12 December 2002

Entry into force: 12 December 2002

Australian Treaty Series

2002 No. 24

The Government of Australia

and

The Government of the United States of America (hereinafter referred to as the Parties),

Resolved to establish a uniform and effective framework for the enforcement of maintenance obligations and the recognition of maintenance decisions, and

In accordance with procedures for the conclusion of reciprocal enforcement of maintenance agreements provided for by the law of Australia and authorized by the United States Congress in section 459A of the Social Security Act, Title 42, United States Code, section 659A,

Have agreed as follows:

Article 1 - Objective

1. Subject to the provisions of this Agreement, the Parties hereby seek to provide for:

   a. the recovery of maintenance or the reimbursement of maintenance to which a maintenance creditor or a public body having provided benefits for a maintenance creditor in one Party (hereinafter referred to as the claimant) is entitled from a maintenance debtor who is subject to the jurisdiction of the other Party (hereinafter referred to as the respondent), and

   b. the recognition and enforcement of maintenance orders, reimbursement orders and settlements (hereinafter referred to as maintenance decisions) made or recognized in either Party.

Article 2 - Scope

1. This Agreement shall apply to maintenance obligations arising from a marriage or parentage, including a maintenance obligation towards a child born out of wedlock. However a maintenance obligation towards a spouse or former spouse where there are no minor children will be enforced in the United States under this Agreement only in those States and other jurisdictions of the United States that elect to do so.

2. This Agreement applies to the collection of payment arrears on a valid maintenance obligation and any applicable interest on arrears and to the modification or other official change in amounts due under an existing maintenance decision.

3. The remedies provided for in this Agreement are not exclusive and do not affect the availability of any other remedies for the enforcement of a valid maintenance obligation under the law of either Party nor do they preclude the Parties from entering into international agreements addressing these issues.

Article 3 - Central Authorities

1. The Parties shall each designate a body as Central Authority which shall facilitate compliance with the provisions of this Agreement.

2. The Central Authority for Australia shall be the Child Support Registrar.

3. The Central Authority for the United States shall be the Office of Child Support Enforcement in the Department of Health and Human Services, as authorized by Title:

   IV-D of the Social Security Act.

4. The Parties may designate additional public bodies to carry out any of the provisions of this Agreement in coordination with the Central Authority.

5. Any changes in the designation of the Central Authority or other public bodies by one Party shall be communicated promptly to the Central Authority of the other Party.

6. Communications may be addressed by the Central Authority or other public body of one Party directly to the Central Authority or other responsible public body of the other Party as designated by that Party.

Article 4 - Applications and Transmission of Documents and Judicial Assistance

1. An application for the recovery or reimbursement of maintenance from a respondent in one of the Parties (hereinafter the Requested Party) shall be made by the Central Authority or other designated public body of the other Party (hereinafter the Requesting Party), in accordance with the applicable procedures of the Requesting Party.

2. The application shall be made on a standard form to be agreed upon by the Central Authorities of both Parties, and shall be accompanied by all relevant documents.

3. The Central Authority or other designated public body of the Requesting Party shall transmit the documents referred to in paragraphs 2 and 5 of this Article to the Central Authority or other designated public body of the Requested Party.

4. Before transmitting the documents to the Requested Party, the Central Authority or other designated public body of the Requesting Party shall satisfy itself that they comply with the law of the Requesting Party and the requirements of this Agreement.

5. When the application is based on, or the documents include, a decision issued by a competent court or agency establishing parentage or for the payment of maintenance:

   a. the Central Authority of the Requesting Party shall transmit a copy of the decision certified or verified in accordance with the requirements of the Requested Party;

   b. the decision shall be accompanied by a statement of finality or, if not final, a statement of enforceability and by evidence that the respondent has appeared in the proceedings or has been given notice and an opportunity to appear;

   c. the Central Authority or other designated body of the Requesting Party shall notify the Central Authority or other designated body of the Requested Party of any subsequent change by operation of law in the amount required to be enforced under the decision.

6. In carrying out their tasks under this Agreement, the Parties shall provide each other assistance and information within the limits of their respective laws and

consistent with any treaties related to judicial assistance in force between the Parties.

7. All documents transmitted under this Agreement shall be exempt from legalization.

Article 5 - Functions of the Central Authority of the Requested Party.

The Central Authority or other designated public body of the Requested Party shall take on behalf of the claimant all appropriate steps for the recovery or reimbursement of maintenance, including the institution and prosecution of proceedings for maintenance, the

determination of parentage where necessary, the execution of any judicial or administrative decision and the collection and distribution of payments collected.

Article 6 - Cost of Services

All procedures described in this Agreement, including services of the Central Authority, and necessary legal and administrative assistance, shall be provided by the Requested Party without cost to the claimant. The costs of testing blood or tissue for parentage determinations shall be borne by the Party in which the proceeding takes place. A Party may assess costs against the respondent appearing in that Party's jurisdiction.

Article 7 - Recognition and Enforcement of Maintenance Decisions

1. Enforceable decisions for family maintenance issued by the courts or other authorized agencies of one Party shall be recognized and enforced in the courts or other authorized agencies of the other Party to the extent that the facts in the case support jurisdiction, recognition and enforcement under the applicable law and procedures of the latter Party.

2. In proceedings before a judicial or administrative authority of one Party to establish or enforce maintenance obligations, the authority:

   a. shall recognise a determination of parentage made in the territory of the other Party if the determination is a finding by a judicial authority, an entry in a public register of births or an instrument of acknowledgment by the parent which is registered with a public authority, and

   b. may recognise a determination of parentage made in the territory of the other Party which is not of a kind referred to in paragraph 2a above.

3. A determination recognised in accordance with article 7.2 shall be recognised to the extent that the facts in the case support jurisdiction and recognition under the applicable laws and procedures of the Party in which proceedings to establish or enforce maintenance obligations occur.

4. Where an authority declines to recognize a determination of parentage referred to in paragraph 7.2(b) above, the Central Authority or other designated public body of the Requested Party shall take all appropriate steps in accordance with article 5 to institute and prosecute proceedings in territory of the Requested Party on behalf of the claimant for the determination of parentage.

5. Orders entered or decisions made after the failure of the respondent to appear in the proceedings shall be considered as decisions under paragraphs 1 and 2 above if it is demonstrated that notice had been given and the opportunity to be heard had been afforded in a way to satisfy the standards of the Requested Party.

Article 8 - Applicable Law

1. All actions and proceedings under this Agreement by either Party shall be carried out pursuant to the law including choice of law provisions and procedures of that Party.

2. The physical presence of the child or custodial parent shall not be required in proceedings under this Agreement within the jurisdiction of the Requested Party.

Article 9 - Geographical applicability

1. For Australia this Agreement shall apply to Australia including Norfolk Island, the territory of Christmas Island and the territory of Cocos (Keeling) Islands.

2. For the United States of America, this Agreement shall apply to the fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act.

Article 10 - Entry into Force

1. This Agreement shall enter into force on the later of the dates on which each Party notifies the other Party in writing through the diplomatic channel that the legal requirements for entry into force have been fulfilled.

2. This Agreement shall apply to any outstanding maintenance decision or determination described in Article 7, or payment accrued under such decision, regardless of the date of that decision or determination.

Article 11 - Termination

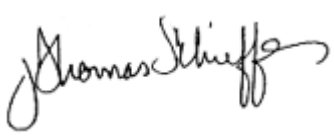
1. Either Party may terminate this Agreement by a notification in writing addressed to the other Party through diplomatic channels.

2. The termination shall take effect on receipt of the notification.

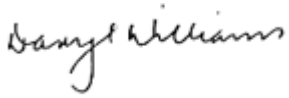
IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Canberra, in duplicate this twelfth day of December 2002

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF AUSTRALIA



The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.2.1: Overview

Context

CSA can collect 'registrable maintenance liabilities'. Most registrable maintenance liabilities arise from a child support assessment. CSA can also collect other types of registrable maintenance liabilities, which are discussed in this chapter.

Legislative References

Sections 17, 17A, 18 and 19 *Child Support (Registration and Collection) Act 1988*

Regulation 4 *Child Support (Registration and Collection) Regulations 1988*

Section 66Q and 77 *Family Law Act 1975*

Sections 107, 139 and 143 *Child Support (Assessment) Act 1989*

Explanation

Registrable maintenance liabilities are defined in sections 17, 17A and 18 of the Registration and Collection Act. Apart from liabilities arising from a child support assessment, the following liabilities are registrable maintenance liabilities.

- A court order requiring a person to pay a periodic amount for the maintenance of their child or step-child.
- A court order requiring a person to pay a periodic amount for the maintenance of the person to whom they are or were married.
- A court-registered agreement requiring a person to pay a periodic amount for the maintenance of their child or step-child.
- A court-registered agreement requiring a person to pay a periodic amount for the maintenance of the person to whom they are or were married.
- A collection agency maintenance liability for a person to pay a periodic amount of maintenance for their child or step-child.
- A collection agency maintenance liability for a person to pay a periodic amount of maintenance for the person to whom they are or were married.
- An order made by a court under section 143 of the Assessment Act, requiring a former payee to repay an amount to a former payer, following a declaration under section 107 that the payer is not a parent of the child concerned.

Specified liabilities can be excluded by regulation, which would mean they are not registrable maintenance liabilities (section 19). The only excluded liabilities are urgent maintenance orders that the payee has not requested the CSA to enforce (regulation 4). A court may order a person to pay urgent maintenance for their spouse (section 77 FLA); or for their child (section 66Q FLA or section 139 Assessment Act).

Version 1.1

< Previous Next >

3.2.3: Court orders and court-registered maintenance agreements

Context

A court order or court-registered maintenance agreement can be a registrable maintenance liability.

Legislative References

Sections 17 and 18 of the *Child Support (Registration and Collection) Act 1988*

Explanation

A person's liability to pay a periodic amount of maintenance for their child, step-child, or spouse or former spouse (but not a de facto spouse) under a court order or court-registered agreement is a registrable maintenance liability (sections 17(1)(b)(i) and 18(b)(i) Registration and Collection Act).

Chapter 3.1 Types of orders contains more information about the types of stage 1 orders and court-registered agreements that are available, and when they cease to be in force. A court order that is not in force cannot be a registrable maintenance liability.

A court order that varies a child support assessment does not in itself give rise to a registrable maintenance liability. The registrable maintenance liability arises from CSA's child support assessment, which CSA will amend to give effect to the order. (See chapter 2.7 Court variation to assessments).

Version 1.0

Issued 1 October 2002

< Previous Next >

3.3.1: Overview

Context

CSA maintains a Child Support Register with details of all registrable maintenance liabilities.

Legislative reference

Sections 13, 23, 24 and 24A *Child Support (Registration and Collection) Act 1988*

Explanation

The Registration and Collection Act sets up the Child Support Register, in which CSA registers all registrable maintenance liabilities for collection.

- The CSA must enter in the Register the details of any child support assessments made or varied.
- Parties to court orders made or amended from 1 June 1988 are required to notify CSA about their orders.
- Parties to maintenance agreements registered in a court from 1 June 1988 are required to notify CSA about their agreements.
- Parties to parentage overpayment orders made from 1 January 2007 are required to notify CSA about these orders.

Version 1.1

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.5.1: Order requiring payment to the payee

Context

A court order or court-registered maintenance agreement may specify that payments be made to the payee's bank account or to a third party such as a solicitor or trustee. Such a provision in an order does not prevent CSA registering the order or court-registered agreement for collection.

Legislative reference

Section 30 *Child Support (Registration and Collection) Act 1988*

Explanation

A court order or court-registered agreement for maintenance creates a liability for one person (the payer) to provide financial support to another person. The terms of the order will make it clear who is entitled to the payments under the order.

Example

> 'M is to pay F spousal maintenance of $120 per week.'
>
> 'F is to pay M child maintenance for their child A in the amount of $74 per week.'
>
> 'M is to pay child maintenance to A of $83 per week.'

A court order may also specify how child support is to be paid.

Example

> 'M is to pay F spousal maintenance of $120 per week. Such payment is to be deposited to F's account with the XXX Bank.'
>
> 'F is to pay M child maintenance for their child A in the amount of $74 per week, by depositing said amount into a trust account for A under F and M's joint control.'

A provision in a court order that specifies how child support is to be paid to the payee does not prevent CSA from registering the order. When CSA registers an order for collection, the amounts payable under the order become debts due to the Commonwealth (section 30). Once an order is registered with CSA for collection, the provisions of section 30 override any payment instructions in the order. Amounts payable under the order are payable to CSA in accordance with the particulars of the register.

A court order or court-registered maintenance agreement that requires the payer to make payments to a third party on behalf of the payee is not a registrable maintenance liability. This is discussed in more detail in chapter 3.2 What is a stage 1 registrable maintenance liability?, heading Periodic amounts payable to the payee

Version 1.0

Issued 1 October 2002

< Previous Next >

3.5.2: Orders discharging late payment penalties

Context

A court exercising family law jurisdiction may not make an order discharging late payment penalties payable to CSA. If a court does make an order of this type, CSA is not bound by the terms of the order, but will consider remitting any penalties.

Legislative reference

Sections 67, 68, 85, and 95 *Child Support (Registration and Collection) Act 1988*.

Administrative Decisions (Judicial Review) Act 1977

Explanation

A court exercising family law jurisdiction has no power to deal with late payment penalties. Despite this, CSA sometimes receives court orders made in proceedings between parents that direct CSA to reduce or remit late payment penalties. CSA is not obliged to give effect to an order that is invalid. However, CSA will consider whether it is appropriate to remit the late payment penalties the order purports to discharge. CSA will take into account any evidence produced to the court about the payer's financial position when deciding if there are special circumstances that make it fair and reasonable to reduce or remit the late payment penalty (section 68(c)). Chapter 5.1 CSA collection, heading Late Payment Penalties

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

3.5.3: Orders applying the assessment formula

Context

A court order or court-registered agreement may require payment of child support at a rate worked out using the provisions of the Assessment Act.

Legislative References

Sections 4 and 17 *Child Support (Registration and Collection) Act 1988*

Part 5 *Child Support (Assessment) Act 1989*

Explanation

A court may make an order under the Family Law Act that says the periodic amount of child support is to be worked out by reference to the Assessment Act. These orders are made in cases where a child support assessment cannot be made under the Assessment Act as the parents, or the child, do not meet the eligibility requirements of that Act.

An order which merely states that the Assessment Act or Part 5 of that Act is to apply does not contain sufficient information for CSA to calculate a periodic amount. Nor does an order which says CSA is to work out the rate of child support, but does not specify how CSA should do this.

Example

> 'M is to pay F such amount as is determined by the Child Support Agency.'
> This order does not contain sufficient information for CSA to work out a periodic amount payable to the payee and is not a registrable maintenance liability.
>
> 'M is to pay F an amount determined by the Child Support Agency using the formula in the Assessment Act.'
> This order contains sufficient information for CSA to work out a periodic amount payable to the payee and is a registrable maintenance liability.

It is important to note that when CSA registers a court order that applies the Assessment Act formula it is not making an assessment under Part 5 of the Act.

CSA will calculate the periodic amount when it registers the order by applying the basic formula contained in section 36(1) of the Assessment Act. CSA will not apply the modifications to the formula contained in Division 2 of Part 5 of the Assessment Act (shared or divided care, high income cap, carer's child support income amount and disregarded income amount, 2 liable parents or 2 or more carers) unless the order specifically requires this. CSA will determine the payer's child support income amount under Subdivision A of Division 3 but the remaining provisions of Division 3 (the estimate provisions) cannot apply.

The provisions of the Assessment Act that require CSA to make new assessments at the start of new child support periods do not apply to orders under the Family Law Act. CSA will only vary the periodic amount if this is specifically required by the terms of the order, and the order states how it is to be done. Otherwise, the amount originally calculated will apply for as long as the order is in force. A parent wishing to change his or her liability due to a change in circumstances must apply to a court for a variation of the order.

Example

> M and F separated in 1987. F has a court order made 17 May 1997 which says:
>
> 'M to pay maintenance to F for the child A.

The Assessment Act formula is to apply.
The liability is to be calculated annually, based on the M's income for the last financial year.
Each year the amount payable for the period 17 May to 16 May in the next year is calculated, based on the payer's taxable income for the previous year.'

This is a registrable maintenance liability and CSA will review the amount payable each year.

Version 1.0

Issued 1 October 2002

< Previous Next >

3.5.5: Severability

Context

A court order or court-registered maintenance agreement may contain clauses that cannot be registered under the Child Support legislation. CSA will register the acceptable parts of the court order or agreement only when the clauses are severable.

Legislative reference

Sections 17 and 18 *Child Support (Registration and Collection) Act 1988*

Explanation

A court order or court-registered maintenance agreement which contains clauses that can be accepted and registered under the Child Support legislation may also contain other clauses that cannot. CSA will register the acceptable parts of the court order or agreement only when the clauses are 'severable', (i.e. when registering those clauses does not change the essential nature of the order agreement). CSA will refuse the application for registration of the entire order if the other clauses are *not* severable.

A court order may include a clause discharging an original order for maintenance and a clause providing for payments at a different rate from that stated in the original order. The intention of the later order is to vary the rate of payment of the earlier order rather than to discharge the maintenance liability entirely. If CSA cannot give effect to the clause providing for payment of child maintenance, for example because it was not for a periodic amount payable to the payee, then it cannot give effect to the clause which discharges the original orders.

Where a court order provides for a periodic amount of maintenance but also contains a clause regarding exchange of property, CSA can register the periodic amount of maintenance and 'sever' it from the property clause.

Version 1.0

Issued 1 October 2002

< Previous Next >

4.1.1: Overview

Context

The objection provisions allow parents to ask CSA to formally reconsider particular decisions made under both the Assessment and Registration and Collection Acts. This means that parents have the opportunity for formal internal administrative review of some CSA decisions. The review is conducted by a CSA officer not involved in making the original decision.

Legislative References

Part VII *Child Support (Registration and Collection) Act 1988*

Explanation

The objection provisions allow parents to ask CSA to formally reconsider particular decisions made under the Assessment Act or Registration and Collection Act.

CSA makes decisions by determining facts and then applying the law to those facts. CSA will make reasonable investigations before making any decision and give each parent the opportunity to comment on information that it takes into account in a way that adversely affects them. New information about the circumstances of the parents or the child may become available after CSA has made a decision. However, CSA cannot simply change a decision once it has been made. A parent must lodge an objection if they want CSA to reconsider a decision. The exception is where there has been a simple factual error (such as a date of birth or arithmetic error) that is not disputed by either parent or the CSA. In these cases, it may be appropriate for CSA to amend the assessment, or the register, without requiring the parents to go through a formal objections process. This will occur rarely and both parents should be contacted before such an amendment is made. If the facts are not clear; if there is new information that one parent has not had an opportunity to comment upon; or if there is any element of dispute, it is not appropriate to change a decision at the request of one parent. This should be considered as an objection to the Registrar's original decision.

A parent who failed to provide information to CSA before the original decision was made may be able make a new application based on the relevant information (e.g. a new change of assessment application). Otherwise, the parent may object to the original decision and CSA will take that new information into account when considering the objection.

If parents believe that CSA has made a mistake of fact and/or applied the law incorrectly they may object to that decision.

If a parent makes a valid objection CSA must reconsider the original decision taking into account any relevant new information provided by both parents or from other sources.

Example

> M (payer) asks CSA to credit an amount paid for their child's school fees against his ongoing child support liability for that child. M provides copies of receipts. F (payee) confirms that M has paid the school fees. CSA credits the payment.
>
> F contacts CSA 2 weeks later and questions whether the payment should have been credited. F says the Family Court ordered M to pay the school fees as part of their property settlement. CSA officer tells F that CSA cannot now vary the decision to take that information into account. CSA officer advises F to object to the original decision.

Version 1.3

< Previous Next >

4.1.3: Decisions made under the Registration and Collection Act to which a parent may object

Context

A parent may object to certain decisions made under the Registration and Collection Act

Legislative References

Sections 4, 79D and 80 *Child Support (Registration and Collection) Act 1988*

Explanation

A parent can object to the following decisions made under the Registration and Collection Act.

- A decision to register or refuse to register a maintenance liability.
- A decision about the particulars of a registered maintenance liability.
- A decision to vary or refuse to vary the particulars in the Register.
- A decision to delete an entry from the Register.
- A decision to credit all or part of a non-agency payment including a prescribed non-agency payments under section 71C of the Act. (See chapter 5.3)
- A decision to refuse to credit all or part of a non-agency payment including a prescribed non-agency payment under section 71C of the Act. (See chapter 5.3)
- A decision to refuse an election that employer deductions not be made.
- A decision to refuse to grant an application for collection of arrears for more than 3 months.
- A decision to refuse an election to end CSA collection.
- A decision to refuse an election to have CSA collect.
- A decision to refuse an overall non-care period.
- A decision to make deductions from Family Tax benefit payments.
- A decision to start or refuse to start a low-income non-enforcement period.
- A decision which results in failure to collect an amount payable that has been unpaid for 6 months or, if legal proceedings have commenced, at least 3 months has elapsed since the proceedings were commenced.
- A refusal to remit late payment penalties imposed on payers and employers.

Section 26 sets out the particulars that CSA must enter in the Child Support Register in relation to each case. As noted above, a parent may object to a decision to vary or refuse to vary those particulars. The particulars entered in the Register include the following.

- Details of the child support assessment, court order or maintenance agreement (including matters such as the name of the parents, the periodic amount and the basis of the liability).
- Details of the payment period and the payment rate (including the initial period, payment period and rate of payment).
- Details of the enforcement period and any suspension of liability.
- Any other particulars that CSA chooses to include (such as the daily rate or statement concerning employer withholdings).

An objection to a decision to vary the particulars in the Register can only be made against the particulars varied or other particulars affected by the variation (sub-section 80(3)).

Version 1.4

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

4.1.7: Effect of objection on original decision

The original decision continues to have effect while CSA considers an objection to that decision. CSA or the other parent may take action to collect amounts owing under the assessment unless a Court issues a stay order in relation that decision (see chapter 4.3.2 Implementing Court Orders that affect Assessments, heading Stay Orders).

Version 1.3

Issued 3 August 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

4.2.1: Overview

Context

The Social Security Appeals Tribunal (SSAT) is an independant statutory body set up to review administrative decisions made by certain Commonwealth agencies. The Registration and Collection Acts states that parents aggrieved by CSA objection decisions made after 1 January 2007 can apply to the SSAT for a review of those decisions.

Legislative References

Part VIIA *Child Support (Registration and Collection) Act 1988*

Explanation

A parent can apply to the Social Security Appeals Tribunal for a review of most CSA objection decisions made after 1 January 2007. See Chapter 4.2.2 for information about decisions which can be reviewed by the SSAT.

The one type of objection decision that cannot be reviewed by the SSAT is the decision made on an objection to a CSA decision to refuse to make a change to the assessment under Part 6A of the Assessment Act because the issues were too complex. If a parent is dissatisfied with that objection decision they may apply to court for a departure order (see chapter 4.3.2 for information about court applications).

A parent can also apply to the SSAT for a review of a CSA decision to refuse to grant an application for an extension of time to lodge an objection.

See Chapter 4.2.3 for information about how to apply to the SSAT.

The SSAT will provide a mechanism of external review that is fair, just, economical, informal and quick. There is a statutory time limit for a parent to make their application. The SSAT can grant an extension of time for a person to make their review application. Chapter 4.2.4 has information on the time limits that are relevant to applications for review.

The parties to SSAT proceedings are the applicant, CSA and the other parent affected by the CSA decision. If the decision being reviewed is an objection decision regarding penalties, or a CSA extension of time decision then only the applicant and the CSA are parties to the review.

CSA must provide the SSAT with a written statement of reasons for its decision, and copies of all relevant documents. The SSAT will inform the other parent of the application and arrange for a hearing before a panel of members. See Chapter 4.2.5 for more information on the review process.

The SSAT reviews the merits of CSA's decision and will take a fresh look at the decision under review. The SSAT can affirm, vary or set aside and replace CSA's decision. The SSAT will consider all the relevant information provided by each party to the SSAT and the applicable child support legislation to determine what is the correct or preferable decision in the circumstances of each case.

The SSAT's decision will have effect from the same date as the original decision, or a date specified by the SSAT. CSA must give effect to the SSAT's decision as soon as possible after it is made.

A party dissatisfied with a SSAT decision may appeal to a court, on a question of law (see chapter 4.3.6, Applications, appeals and court orders under the Registration and Collection Act).

More information on the SSAT review process is available at the SSAT website.

Version 1.1

Issued 23 January 2008

< Previous Next >

4.2.2: Decisions which can be reviewed by the SSAT

Context

A parent can apply to the SSAT for a review of most CSA objection decisions, and also decisions to refuse an application for an extension of time to lodge an objection.

Legislative References

Section 89 Child Support (Registration and Collection) Act 1988

Explanation

A parent can apply to the Social Security Appeals Tribunal for a review of most CSA objection decisions made after 1 January 2007. The SSAT will provide a mechanism of independent external review of CSA decisions that is inexpensive, fair, informal and quick.

Objection Decisions

A parent can apply to the SSAT for a review of most CSA objection decisions made after 1 January 2007.

See chapter 4.1.2 for information about decisions made under the Assessment Act to which a parent may object. Chapter 4.1.3 has information about decisions made under the Registration and Collection Act to which a parent may object

The parent who objected to the original CSA decision, or the other parent who was advised of the objection, may apply to the SSAT for a review of the objection decision.

Example

F (payer) is dissatisfied with CSA's objection decision to not credit against his ongoing child support liability an amount paid directly to their child's school. The objection decision dated 8 January 2007 was received by F on 11 January 2007.

There are no further internal CSA review processes for that decision. F may apply to the SSAT for a review of the objection decision.

There are two types of objection decisions that cannot be reviewed by the SSAT. The first is where the original decision of CSA was that the matter was too complex for administrative determination under Part 6A of the Assessment Act, and the objection decision did not change the original decision. The second type of objection decision that cannot be reviewed by the SSAT is where on objection CSA has substituted a decision that the matter was too complex for administrative determination under Part 6A of the Assessment Act.

If a parent is dissatisfied with either of the above types of objection decisions they may apply to court for a departure order (see chapter 4.3.2 for information about court applications).

Extension of time decisions

A parent can apply to the SSAT for a review of a CSA decision to refuse to grant an application for an extension of time to lodge an objection.

Version 1.2

Issued 3 August 2007

4.2.3: How to apply to the SSAT for a review of a CSA objection decision

Context

A parent aggrieved by a CSA objection decision made after 1 January 2007 can apply to the SSAT for a review of that decision.

Legislative References

Sections 94 and 95 Child Support (Registration and Collection) Act 1988

Explanation

A parent can apply to the Social Security Appeals Tribunal for a review of most CSA objection decisions or a decision to refuse an application for an extension of time to lodge an objection.

The application can be made by:

- Telephoning the SSAT on 1800 011 140 and making an oral application, or
- Going to an office of the SSAT and making an oral application, or
- Sending a completed a SSAT Appeal Form to the SSAT, CSA or Centrelink, or
- Sending a written request for a review by the SSAT to the SSAT, CSA or Centrelink.

A verbal application can only be made by calling the SSAT on 1800 011 140 or by going to an SSAT office.

A written application, using the SSAT appeal form or as a letter to the SSAT, can be sent or delivered to a SSAT office, a CSA office or a Centrelink office. If an application is received by an office other than the SSAT the application should be sent to the SSAT as soon as possible, in any case not later than 7 days after the application was received (section 95(1)). It is recommended that applications be made direct to the SSAT to allow the quickest response to the application.

The SSAT appeal form which can be used for the review of CSA decisions is available at SSAT, CSA and Centrelink offices, or can be downloaded from the SSAT website.

More information on applying to the SSAT, including contact details for SSAT offices, is available at the SSAT website.

Version 1.0

< Previous Next >

4.2.4: Time limit on applications for SSAT review

Context

A parent must apply for a review of an objection decision within 28 days (or 90 days for parents who reside overseas in a reciprocating jurisdiction) of the date they received CSA's notice of the decision. If a parent did not apply in the specified time they can make an application for review that includes a written application for an extension of time to apply.

Legislative References

Administrative Appeals Tribunal Act 1975 .

Sections 90, 91 and 92 *Child Support (Registration and Collection) Act 1988*

Explanation

A parent can apply for an extension of time if they wish to seek a review after the prescribed period has ended. This topic explains how a parent applies for an extension of time.

Applying for an extension of time

If a parent does not make an application for a review within 28 days of being served with the objection decision (or 90 days for cases where parents who reside overseas in a reciprocating jurisdiction) they can apply for an extension of time to lodge their application for a review. The application for an extension of time must be in writing. It must explain why they did not lodge the objection within the 28 or 90 days. For more information see the SSAT website.

Making a decision to grant or refuse an application for an extension of time

The SSAT has 60 (or 90 days for parents who reside overseas in a reciprocating jurisdiction) days to consider the extension application and make a decision to grant or refuse it.

AAT Review of an SSAT decision to refuse an application for an extension of time

If a person's extension of time application is refused by the SSAT then that person can apply to the AAT for a review of that decision. The Child Support legislation gives the AAT the power to review these decisions. A parent makes their application for review under the *Administrative Appeals Tribunal Act 1975*

There is a statutory period for a parent to make their application. The AAT can grant an extension of time for a person to make their application. An application fee is payable. The application fee may be waived in certain circumstances. For more information see the AAT website.

Version 1.1

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

4.2.5: The SSAT review process

Context

The SSAT is to provide a mechanism of external review that is fair, just, economical, informal and quick. When an application has been made for a review of a CSA objection decision the SSAT will contact the parties and arrange for a hearing to be held. The panel members hearing the application will consider the documents and submissions from the parties and make a decision. The SSAT is independent of CSA.

Legislative References

Part VIIA and Division 3, Part VIII Child Support (Registration and Collection) Act 1988

Explanation

Application received by the SSAT

When the SSAT receives an application for review of a CSA objection decision it will send a letter acknowledging receipt to the applicant. It will also notify CSA and the other parent (when relevant) that the application has been received (section 95(2)).

Parties to a review

The parties to SSAT proceedings are the applicant, CSA and any other person entitled to apply for a review of the decision under section 89 (section 101(1)(c)). For most objection decisions this will mean that both the parties to the CSA case are parties to the SSAT review of the objection decision.

If the decision being reviewed is an objection decision regarding penalties, or a CSA extension of time decision, then only the applicant and CSA are parties to the review.

Any person whose interests are affected by the by the objection decision can apply in writing to the Executive Director of the SSAT to be made a party to the review (section 101(2)). The applicant would need to identify how their interests will be affected and why they should be a party to the review.

The SSAT Executive Director may also give written notice of the application to another person whose interests are, in the Executive Director's opinion, affected by the decision (section 102(1)). The notice, which may be given at any time before the review is determined, must include information about that person's right to apply to be joined as a party to the review (section 102(3)).

However, children of the parties cannot be parties to the review. This includes children under the age of 18 who are the children of the applicant or respondent parent, or children who are cared for by an applicant or respondent non-parent carer.

The SSAT Executive Director may direct that a party to a review no longer be a party to the review. Section 101(5) describes the circumstances where such a direction may be made.

Documents to be provided by CSA

Documents to be sent within 28 days

When CSA is advised that an application has been received by the SSAT it is required to provide the SSAT with a statement about the decision under review (section 95(3)(a)). The statement must set out the findings of fact, refer to the evidence and give the reasons for the decision. The report prepared by the objections officer explaining their decision will be the document provided to satisfy this requirement.

CSA is also required to provide a copy of every document that is relevant to the review of the decision (section 95(3)(b)). All documents referred to or relied upon in the objection decision must be included. Documents required to be sent will include all letters relevant to the decision, a copy of CSA records of conversations with the parents and a copy of any materials relied upon in making the objection decision. As documents 'relevant to the review of the decision' are to be provided some documents received after the objection decision was made may be included, if they will assist the SSAT in undertaking their review of the objection decision.

Example:

M is dissatisfied with CSA's decision on his objection to the care levels used in calculating the assessment of child support. Both parents have provided CSA with calendars and other materials about the children's living arrangements, either when the decision was first made or during the objection process.

If M was to apply to the SSAT for a review of the objection decision the information received from the parents would be included as section 95(3) documents.

Example:

F is dissatisfied with CSA's decision on his objection to the care levels used in calculating the assessment of child support. F has also made an application for a change to the assessment.

If F was to apply to the SSAT for a review of the objection decision the information received from the parents regarding care would be included as section 95(3) documents. The documents relating the change of assessment application would not be included as they are not relevant to the objection decision.

Example:

M, a paying parent, is dissatisfied with CSA's decision on her objection to the calculation of the arrears owing when her liability again became collectable by CSA. The objection decision is dated 8 January 2007.

On 18 January 2007 CSA received a letter from M that included receipts for payments made in the relevant private collect period. As the objection decision had been made there are no further review processes within CSA.

If M was to apply to the SSAT for a review of the objection decision the letter received 18 January 2007 would be included as a section 95(3) document.

In preparing the documents CSA may remove some identifying details from the documents for privacy or other reasons. These deleted details will include the address and telephone numbers of the parties, address details of employers, Child Support Identification Numbers and Tax File Numbers.

CSA must provide a copy of the documents given to the SSAT to each other party to the review (section 96(1)).

Some documents may not be required to be sent

CSA may identify that a relevant document contains information about a person that is private and considers that it would not be appropriate for that information to be sent to the other party. The information may be a medical report or information relating to a third person, such as a family member of one of the parties.

CSA can apply to the SSAT under section 97 for a direction that the document, or part of the document, is not required to be sent. CSA must provide two copies of the document to the SSAT with the application for the direction. CSA must send a copy of the section 97 application to each party to the review.

The SSAT will consider the section 97 application and may either direct CSA to send the document to the party concerned or make a direction under section 98 prohibiting or restricting the disclosure to the other parties to a review of the contents of the document.

SSAT Executive Director may give directions about disclosure of documents

The SSAT Executive Director may make a direction under section 98 prohibiting or restricting the disclosure, to some or all of the parties to a review, of the contents of a document. The direction may be made after an application by CSA or on the initiative of the SSAT.

The SSAT Executive Director may make a direction under section 96(2) directing a person who has received the section 95(3) statement and documents not to disclose information in the statement or documents. A person commits an offence if they contravene a direction made under section 96(2). The penalty is imprisonment for 2 years.

Additional information can be sought

The SSAT can ask CSA to provide the SSAT with information or a document that the CSA has that is relevant to the review (section 103J).

The SSAT may obtain information necessary for the review from other persons by issuing a written notice requiring the person to give the requested information to the SSAT, to attend the SSAT and answer questions or to produce documents to the SSAT (section 103K).

The SSAT may ask CSA to exercise its information gathering powers (see chapter 6.2.4: Information gathering powers under the Registration and Collection Act) to obtain information relevant to the review. The CSA must comply with such a request as quickly as possible, no later than 7 days after the request was made (section 103L).

>Later documents to be sent

Documents relevant to the review may come into the possession of CSA after the section 95(3) statement and documents have been sent to the SSAT and the other parties. CSA is required to send two copies of these later documents to the SSAT as soon as possible after their receipt (section 95(5)).

Application may be dismissed

An application for a review of a CSA decision can be dismissed under section 100 if:

- the decision is not reviewable by the SSAT, or

- the application is frivolous or vexatious, or
- all of the parties consent, or
- the parties have failed to attend the hearing or do not intend to proceed with the application.

In considering the actions of the parties to decide if an application should be dismissed under these provisions the SSAT does not have regard to the actions of CSA. It is therefore the actions and wishes of the parents that the SSAT will consider in making its decision.

Example:

M, a paying parent, is dissatisfied with CSA's decision on his objection to the calculation of the arrears owing when his liability again became collectable by CSA. The objection decision is dated 8 December 2006.

As the objection decision was made before 1 January 2007 the decision is not reviewable by the SSAT. The application would be dismissed under section 100(1)(a).

An application for a review of a CSA decision can be dismissed under section 100A at the request of the applicant. The applicant must notify the SSAT in writing that the application for review is discontinued or withdrawn.

Submissions from the parties

Submissions from parties other than CSA

Submissions from CSA

Submissions from parties other than CSA

A party to the review other than CSA may make oral submissions, written submission or both oral and written submissions to the SSAT (section 103C). The SSAT will advise the parties of the timeframe for any written submissions. Oral submissions are made at the hearing. Another person may make submissions to the SSAT on behalf of a party.

The SSAT may make determinations or directions about submissions, including:

- that a review will be conducted without oral submissions from the parties (section 103D),
- about the manner in which submissions will be made, eg by telephone (section 103D),
- the use of interpreters (section 103C(5)).

A party to the review can provide additional documents to the SSAT as part of their case. These documents should be provided to the SSAT before the SSAT hearing.

Submissions from CSA

CSA may make written submissions to the SSAT (section 103F(1)). CSA may make a written request to the SSAT for permission to make oral submissions, or both oral and written submissions, to the SSAT (section 103F(2)). The request must explain how the submissions would assist the SSAT. The SSAT may grant the request if it is considered that such submissions would assist the SSAT in carrying out its functions under the Act (section 103F(3)). The SSAT may order CSA to make oral or both oral and written submissions when such submissions would assist the SSAT (section 103F(4)).

Pre Hearing Conference

The SSAT may arrange a conference between the parties before the application proceeds to a hearing when it decides that such a conference would assist in the consideration of the review (section 103). A pre-hearing conference can be held when the SSAT considers that it would be helpful; it is not a mandatory part of every review process. A pre-hearing conference may be used to explore the issues between the parties, and to narrow the ground between the parties. If the parties reach agreement, the SSAT may make an order by consent, if it thinks it appropriate to do so.

The Hearing

If oral submissions are to be made by the parties (see directions about submissions) the SSAT will arrange for a hearing to be held. A panel of generally two, but between one and four members will sit as the SSAT for the purposes of the review. Where more than one member is sitting on the panel, one of the members is designated as the presiding member (section 103M). In reviewing a decision the SSAT is not bound by legal technicalities, legal forms or rules of evidence. The SSAT is to act as speedily as a proper consideration of the matter permits (section 103N). The hearing will be held in private (section 103P).

The SSAT may take evidence on oath or affirmation for the purposes of a review of a decision (section 103G). Children (under the age of 18) of the parties or being cared for by a non-parent carer who is a party, are not to give evidence (section 103H). The SSAT may adjourn the hearing from time to time. There are restrictions on the number of times a hearing may be adjourned (section 103R).

The presiding member may give directions about the procedure to be followed on the hearing of the review SSAT (section 103ZA(4)). The presiding member can direct who will be present during the hearing. The Executive Director of the SSAT may make general directions about the procedures to be followed by the SSAT in connection with the review of decisions (section 103ZA(1)).

Decisions that can be made

The SSAT is independent of CSA and will take a fresh look at the decision under review. The SSAT will make a fresh decision after considering the relevant information provided by all parties (including information provided at the hearing) and the applicable child support law. The SSAT must determine what is the correct or preferable decision in the circumstances of each case.

After reviewing the merits of CSA's decision the SSAT must make a decision to (section 103S):

- affirm that decision; or
- vary that decision; or
- set aside that decision and substitute a new decision; or
- set aside that decision and send the matter back to CSA with directions or recommendations.

The parties to the review (other than CSA) may reach agreement on the review decision that should be made (section 103W). If so, they are to advise the SSAT in writing, signed by the parties, of the terms of the agreement. The agreement may address some or all of the issues before the SSAT. If the SSAT is satisfied that it is within its powers to make the agreed decision then the decision will be made as agreed.

The SSAT can only make decisions that are in accordance with child support law. The SSAT cannot make a decision that CSA could not make (section 103T).

The SSAT's decision is taken to be the decision of the original CSA decision-maker and has effect from the date of the original decision, or from a date specified by the SSAT (section 103V).

CSA must immediately take action to give effect to the SSAT decision (section 110V).

Notification of decision

The SSAT will advise the parties to the review of their decision within 14 days of making the decision (section 103X). The notice must be in writing and must include a statement that an appeal may be made to a court on a question of law. The SSAT must also provide reasons for the decision within 14 days of making the decision (section 103X(3)). This can be done in two ways:

- by providing a written statement of the reasons for the decision with the notification of the decision, or
- by providing oral reasons for the decision and explaining that the parties may request a written statement of the reasons.

The written statement of the reasons must set out the reasons for the decision, set out the findings on any material questions of fact and refer to the evidence on which the findings of facts are based. The request for a written statement of the reasons must be made within 14 days of the receipt of the decision (section 103X(4)). The SSAT must comply with the request for written reasons within 14 days after the day the received the request (section 103X(5)).

Section 103Y allows the SSAT to amend a decision, or the statement of the reasons for a decision, to correct an obvious error or an inconsistency between the decision and the statement.

Publication of decisions

Section 110X imposes restriction upon the publication of an account of review proceedings if the report identifies a party to the proceedings or other people relevant to the review. Reports that do not identify the participants may be published for certain purposes (section 110X(4)).

Appeal to a court on a question of law

A parent dissatisfied with a SSAT decision may appeal to a court, on a question of law (see chapter 4.3.6, Appeals and court orders under the Registration and Collection Act). CSA, as a party to the review, can appeal a decision of the SSAT to a court on a question of law (s110B).

More information on the SSAT review process is available at the SSAT website.

Version 1.1

Issued 3 August 2007

< Previous Next >

4.2.6: Effect of review application on the original decision

Context

CSA's decision continues to have effect after a parent applies to the SSAT for review of that decision.

Legislative References

Division 1, Part VIIIA and sections 99 and 111C Child Support (Registration and Collection) Act 1988

Explanation

When a parent applies to the SSAT for a review of CSA's decision, that decision continues to have effect until the SSAT makes a decision. A parent can apply to a court for a stay order under section 111C of the Registration and Collection Act to stay CSA's objection decision until the outcome of the SSAT review is known.

If a decision subject to an application for review by SSAT is changed after a parent has made an application to the SSAT the application for review will be treated as an application for review of the changed decision.

Version 1.0

Issued 1 January 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

4.3.1: Overview

Context

A parent can apply directly to a court if dissatisfied with some CSA decisions under the Assessment Act and the Registration and Collection Act. In other cases a parent may be able to apply to court after having objected to CSA's decision and having the decision reviewed by the Social Security Appeals Tribunal (SSAT). Courts may make a range of orders affecting the child support case including orders under the Family Law Act.

Legislative References

Parts VIII, VIIIA and VIIIB *Child Support (Registration and Collection) Act 1988*

Part 7 *Child Support (Assessment) Act 1989*

Administrative Decisions (Judicial Review) Act 1977

Explanation

A parent can apply directly to a court if they are dissatisfied with some CSA decisions under the Assessment Act and the Registration and Collection Act. It is usually necessary for CSA to have dealt with an objection about the decision and for the SSAT to have reviewed that decision before the parent can make their court application.

A court dealing with a parent's application under the Assessment Act or Registration and Collection Act must have jurisdiction to deal with application about child support matters under those Acts. Courts with jurisdiction include the Family Court, the Federal Magistrates Court, State and Territory Magistrates Courts and the Family Court of Western Australia.

A parent can appeal to a court on a question of law in relation to an SSAT review of an objection decision. The SSAT can also refer a question of law arising in a proceeding to a court. In certain circumstances a parent can also apply directly to a court for a change to CSA's assessment because of special circumstances.

The court may make other orders affecting a child support case that are detailed in 4.3.2 and 4.3.6 including orders about child support agreements, stay orders and orders against a payee for the repayment of overpaid child support.

The court may also make some orders under the *Family Law Act 1975* that will affect a child support assessment. These include orders under section 66M that a step-parent has an obligation to provide support for a child and orders for residency and contact.

The *Administrative Decisions (Judicial Review) Act 1977* provides that a parent may apply to the Federal Court and the Federal Magistrates Court for a review of any CSA decision, except for change of assessment decisions under Part 6A of the Assessment Act. (See chapter 2.6)

Version 1.3

< Previous Next >

4.3.3: Implementing court orders made under the child support legislation

Context

When CSA is notified of an order that affects an assessment it must take any action necessary to amend the child support assessment to give effect to the order. This section explains how CSA gives effect to specific kinds of court orders.

Legislative reference

Sections 108, 113, 119, 127, 138 and 142 *Child Support (Assessment) Act 1989*

Part VIIIB *Child Support (Registration and Collection) Act 1988*

Explanation

When a court's decision under the child support legislation becomes final, CSA must take any action necessary to amend the child support assessment to give effect to the order. However, CSA's policy is to give effect to a court order as soon as possible after it is notified of the provisions of the court order, without waiting for the order to become final. If the order is changed following an appeal, CSA will amend the child support assessment again to reflect the terms of the later order.

When court orders become final

An order of a single Judge or Magistrate becomes final at the end of the period allowed by the court rules for appealing against that to a higher court. This is usually 28 days. An order of the full bench of the Family Court will become final 30 days after it is made unless an application is made to the High Court for special leave to appeal.

This section explains how CSA gives effect to specific kinds of court orders, including

- orders for a periodic amount
- orders for a nil assessment
- orders to reduce arrears
- orders varying, setting aside or nullifying an earlier order
- orders CSA cannot implement
- severability of clauses

The section also discusses

- end dates of orders to change the assessment
- the effect of an agreement on an order to change the assessment
- the effect of a terminating event on an order to change the assessment
- setting a rate of child support for more than one child
- unemployment clauses
- self-supporting children
- children in full-time education
- orders and notations

Orders for a periodic amount

An order may say that a parent must pay a periodic amount but not state that whether the order is made under the Assessment Act or if it is an order for a change to the assessment. CSA will interpret such orders as orders to change the assessment unless there is an indication to the contrary. If there is a heading on the

order that suggests it is made under the provisions of the Family Law Act the case officer should obtain a copy of the application to check whether the applicant applied for a departure order.

CSA will give effect to an order for a change to the assessment even if it has not made a decision on an application for change of assessment in the case and/or a decision on an objection to a decision to refuse or change the assessment or is not aware of any SSAT review of an objection decision. CSA will accept, without further investigation,that the court has acted correctly in making the order (unless there is any further order stating that the order is invalid or cannot be enforced). The court may have been considering other matters such as a property settlement and so it was not necessary for the parent concerned to seek a departure from the assessments by making an application to CSA, to object to an earlier decision under Part 6A of the Assessment Act or to seek SSAT review.

Orders reducing the assessment to nil

CSA cannot make a change of assessment decision which has the effect of reducing the annual rate of child support below the minimum annual rate for that period (section 98SA). However, the court may make such orders and CSA will give effect to them (section 66B).

An order to reduce arrears under the Assessment Act

A departure order or agreement may purport to discharge arrears where an assessment has been made under the Assessment Act. The child support legislation does not expressly provide for arrears to be discharged but CSA will give effect to these orders and agreements where possible by varying the rate of child support for a specified period. To avoid any uncertainty a departure order or agreement which seeks to discharge arrears should set the rate of child support for the period equal to the amount which has already been paid.

Orders varying, setting aside or nullifying a particular order

The Assessment Act does not provide for a parent to apply to have a previous court order varied or set aside. However, the same effect can be obtained by applying for a change to the assessment. If a court makes such an order CSA will interpret it to be an order to change the child support assessment and make appropriate amendments to the assessment.

If a court makes an order that nullifies an earlier order this means that the earlier order should not have been made and has no legal effect. CSA will amend the assessment as if the earlier order had not been made.

Orders CSA cannot implement

If CSA cannot give effect to an order it must advise the parents and, if appropriate, their legal representatives. They must also be advised that they have the right to object under Part VII of the Registration and Collection Act if they consider that the particulars of their assessment are incorrect because CSA did not give effect to the order.

Severability of clauses in an order

An agreement or court order that contains clauses that can be accepted or registered under the child support legislation may also contain clauses that cannot be accepted or registered under the legislation. The clauses that could normally be registered or accepted cannot be registered or accepted if doing so, without registering the other clauses, would change their meaning or change the essential nature of the order or agreement. They are said to be 'not severable' from the other clauses and the application for acceptance or registration of the entire order or agreement must be refused.

CSA will advise both parents if there are clauses which cannot be accepted or registered and discuss alternative options.

End dates of orders to change the assessment

An order changing the assessment has effect until:

- a terminating event occurs (section 142)
- a further departure order is made, or
- the end date or occurrence of an event specified in the order.

Effect of an agreement on an order to change the assessment

When CSA accepts a child support agreement, that agreement has the same effect as a new court order and can replace or otherwise affect an existing court order

Terminating events and change of assessment orders

A terminating event may happen in relation to all or some of the children covered by the assessment subject to a court order that changes the assessment. The order ceases to be in force as of the date of the terminating event (section 142 of the Assessment Act; section 111H of the Registration and Collection Act). The order will remain in force for any child not affected by the terminating event.

If a payee reapplies for an administrative assessment after a terminating event (for example, because a child who had left their care later returns to their care) CSA will use the formula and not the change of assessment order when it makes a new assessment for the child for whom the assessment ended.

Where a change of assessment order is in force that covers only some of the children of the relationship, or where the order has ceased to be in force for some of the children, CSA will make a 'mixed assessment'. Some of the children will be assessed in accordance with the departure order and others in accordance with the child support formula, as appropriate.

Setting a rate of child support for more than one child

Ideally a court order that sets a rate of child support for more than one child will state how much is payable for each of the children. In the absence of such a statement CSA cannot apportion the amount between the children. CSA's assessment will continue to reflect the full amount payable under the order when a terminating event happens in relation to one or more of the children.

Unemployment clauses

Court orders and agreements can suspend or reduce the liability when a parent is unemployed. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to try to obtain agreement about the intention of the clause. If the parents are unable to agree on the intention of the clause CSA will take the following issues into account when it interprets the court order.

For the liability to be varied when a parent becomes unemployed CSA must be able to determine the person's employment status. CSA will accept that a parent is unemployed if they receive a benefit or pension from Centrelink, in the absence of any evidence to the contrary. Where the parent does not receive benefit or pension, CSA will consider statements made by the parent and documentary evidence such as a certificate of separation.

Many court orders and agreements allow for a reduced liability during periods when a parent is 'in receipt of unemployment benefits'. A difficulty arises when a parent is not employed but is not receiving an unemployment benefit, or is receiving another type of benefit. A broad interpretation will be given to the term 'unemployment benefits'. CSA may apply such a clause where the person is receiving a Centrelink benefit or pension as a result of not being in employment (e.g. Disability Support pension or Sickness Allowance). However, if a parent is receiving benefits but their employment hasn't been terminated the parent is still employed.

A parent may be unable to work because of a work related injury, and receive periodic compensation payments. CSA will determine if the parent is still employed by their employer. If the employment contract has been terminated CSA will accept that the person is 'unemployed' despite being in receipt of payments which may be greater than those payable to unemployed welfare beneficiaries.

A court can make an order that varied a parent's liability in a current period of unemployment, or one that applies during any period of unemployment.

Example

> 'The amount payable is to be reduced to $10 per week until F gains full-time employment' applies to F's current period of unemployment.
>
> 'The amount payable is to be reduced to $10 per week during periods when F is not in full-time employment' applies whenever F is unemployed after the date of the order.

Self-supporting children

Orders and agreements sometimes contain a provision providing for a reduction in child support payable if the child is self-supporting. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to obtain agreement about the intention of the clause if possible. If the parents are unable to agree on the intention of the clause CSA will interpret the clause in the following way.

CSA must be satisfied that the child is, in fact, supporting themself. CSA will not consider whether or not the child is capable of being self-supporting or should be self-supporting (although this may provide a reason for a change of assessment in appropriate cases).

In determining whether a child is self-supporting CSA will determine the child's actual income and whether the child is paying for his or her basic living expenses without financial support from another person. Basic living expenses include accommodation, food, household utilities and transport costs. CSA will disregard social security payments the child is receiving except where the child is not living with the payee. If the child is also making lifestyle choices which would not be available without an independent source of income (for example, buying a car), the child is more likely to be self supporting.

If the child is living away from home CSA will consider whether the payee continues to have care and control of the child or whether the child is living independently from the payee and meeting their own costs. CSA will consider whether there has been a terminating event.

If the child continues to live with the payee, they will be self supporting if they pay a reasonable contribution towards household expenses including accommodation, utilities and food and groceries or if they pay board equal to this amount to the payee. If the child is living with the payee but is not contributing towards those household expenses or is making a nominal contribution only CSA will find that the child is not self-supporting.

Children in full-time education

Orders sometimes state that they are to operate until a child ceases to be in full-time education or until they finish a particular level of education such as secondary schooling. Where a clause is ambiguous or uncertain CSA will discuss the problem with both parents to try to obtain agreement about the intention of the clause. If the parents are unable to agree on the intention of the clause CSA will consider the following issues when it interprets the clause.

Some institutions such as TAFE offer a range of courses from secondary education to vocational training and higher education courses. Tertiary education involves a distinct qualification, a certificate, diploma or degree, rather than matriculation or vocational training. CSA will ask for evidence from the payee about the child's student status. If the child is still at school CSA will find that the child is in full-time education.

If the child has finished school and is studying at an institution that considers the child as a full-time student, CSA will generally accept that the child is in full-time education.

Orders and notations

An order for a change to the assessment made by consent under Part 7 of the Assessment Act can sometimes contain notations, notes or annotations to draw attention to actions the parents have taken or will take in the future. Whilst a notation can indicate the parents' intentions they are not orders and cannot be registered or vary an assessment.

Version 1.3

< Previous Next >

4.3.5: Effect of a court order for maintenance of an eligible child where there is no assessment

Context

The Family Law Act states that a court cannot make an order for the maintenance of a child under that Act if a parent may apply for an assessment of child support for that child.

Legislative reference

Sections 63G, 66E, 86 and 87 *Family Law Act 1975*

Section 152 *Child Support (Assessment) Act 1989*

Explanation

Section 66E of the Family Law Act states that a court shall not make an order for the maintenance of a child under the Family Law Act where an application could properly be made under the Assessment Act in relation to the child and the parents.

Occasionally a court makes an order under the Family Law Act which should not have been made because one or both of the parents was eligible to apply for an administrative assessment. However, CSA will accept that such an order is validly made and will register it, subject only to checking that the order has not expired, or has not ceased to be in force.

CSA will advise both parents if it is notified of a court order that appears to contravene section 66E that they may apply for an assessment. If CSA accepts the application, the court order will cease to have effect from the start date of liability of an assessment (section 152).

If the order was made by consent and a copy has been signed by both parents, one of the parents may apply to CSA for acceptance of the order as a child support agreement (subject to section 91A which creates special requirements for payees in receipt of more than the base rate of Part A Family Tax Benefit). (See chapter 2.5, heading Application for acceptance of agreement)

Where CSA becomes aware that it has registered an order that contravenes section 66E of the Family Law Act, it will not 'deregister' the order. CSA will advise both parents that the liability will continue to be payable under the order, unless either parent applies for an administrative assessment. If the order is signed by both parents, CSA will also advise them that either parent can apply for acceptance of the order as a child support agreement.

Maintenance provisions in a parenting plan or child maintenance agreement

A provision for periodic child maintenance in a parenting plan or child maintenance agreement made under the provisions of the Family Law Act has no effect and is not enforceable in any way (sections 63G(5), 86(3B) and 87(4D) Family Law Act). CSA will not register such an agreement or provision as a court order. However, if a copy of the parenting plan or child maintenance agreement is signed by both parents then either may apply for it to be accepted by CSA as a child support agreement (subject to section 91A of the Assessment Act which creates special requirements for payees in receipt of more than the base rate of Part A Family Tax Benefit). (See chapter 2.5, heading Application for acceptance of agreement)

Version 1.1

Issued 18 February 2003

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.4.1: Choice of Court

Context

CSA may take action to recover a debt in:

- a court with jurisdiction for the recovery of debts up to the amount of that debt, e.g. state, local and magistrates' courts, and
- the Family Court of Australia,
- the Federal Magistrates' Court,
- the Supreme Court of the Northern Territory,
- the Family Court of a state, and
- a court of summary jurisdiction. A court of summary jurisdiction is defined in Sub-section 26(d) of the *Acts Interpretation Act 1901*. Essentially, any judge, judicial officer or magistrate sitting as a court to hear matters summarily, generally in state-based local and magistrates' courts.

Legislative References

Sections 104, 105 and 113 *Child Support (Registration and Collection) Act 1988*

Explanation

CSA can't take legal action in more than one court, at the same time, for the same debt. CSA must choose the court in which to take recovery action.

Example

> CSA cannot use the Family Court if there is already legal action for recovery taking place in a local court for the same debt, unless it formally discontinues the action in the local court.

However, CSA may take successive actions using different enforcement processes, i.e. civil action and action under the Family Law Act (*Deputy Child Support Registrar v Harrison* (1996) FLC 92-656).

Where a judgement is obtained in a civil court, CSA is not prevented from seeking to recover any unpaid portion of the judgement under the Family Law Act in a court with family law jurisdiction. However, only the parts of the judgement representing maintenance (as distinct from penalties or costs) may be enforced in this way (*DCSR v Harrison*).

Version 1.1

Issued 29 October 2003

< Previous Next >

5.4.2: CSA's power to bring proceedings

Context

Once CSA registers a maintenance liability for collection, the amounts payable are debts due to the Commonwealth by the payer. The debt is enforceable by CSA and may be recovered through court proceedings brought by either the CSA or the payee. This chapter discusses the CSA's power to bring proceedings. The payee's right to bring proceedings to recover the debt is discussed in chapter 5.4.7.

Legislative References

Sections 30, 113 and 117 *Child Support (Registration and Collection) Act 1988*

Explanation

CSA's power to take recovery action in a court is based on section 113 of the Registration and Collection Act.

CSA can commence court action in the name of the Registrar or Regional Registrar. The court action can be in any court having jurisdiction under the Act.

Representation of CSA in proceedings

In any enforcement action or prosecution under the Registration and Collection Act or any action which arises out of the Act, CSA may be represented by (section 117):

- a person enrolled as a barrister, solicitor, legal practitioner of a federal court or the Supreme Court of a state or territory; or
- a person the Registrar or his delegate has authorised in writing to appear.

When a person appears in court proceedings and states that they appear by authority of the Registrar or his delegate, it is prima facie evidence that the person is authorised. The court will accept that the person is authorised unless there is evidence that the person is not authorised (section 117(2)). For information about authorisations, see chapter 6.1 Authorisation and delegation.

Version 1.2

< Previous Next >

5.4.3: Enforcement by civil action

Context

If CSA has been unsuccessful in its attempts to recover a child support debt by administrative means, there are a number of enforcement methods still available. CSA may apply to enforce the debt under the Family Law Act or may take civil action to recover the debt. Civil action involves obtaining judgment, and then enforcing the judgment through the court. CSA can also recover amounts owed by employers or payees by taking civil action.

Explanation

Civil recovery action is taken by lodging a statement of claim at the court and serving the debtor with a summons. If the matter is not settled, or the debtor fails to respond, CSA may apply for judgment to be automatically entered against the debtor.

Preparation of a summons and statement of claim

A summons for recovery of a debt, where the amount of the debt is not in dispute, is known as a liquidated claim (also known as a special claim). The statement of claim must set out the basis for the claim so that the debtor can easily lodge a defence with the court disputing the claim. The summons served must state a time limit from the date of service during which the debtor may dispute the claim. The debtor is advised that a default judgment may be obtained against them after that time.

The summons and statement of claim must be filed with the court, and stamped with the court seal. A sealed copy must be personally served on the debtor. An affidavit of service must be available to prove service and receipt before any further step in the action may be taken. The Rules of Court in the jurisdiction in which the action is being taken will set out the form of summons and requirements for service and affidavits.

Obtaining Judgment

A summons will allow a certain time after service, during which a debtor can dispute the claim by filing a defence with the court. The defence must set out the basis for the dispute and the aspects of the claim the debtor disagrees with. The defence must be filed with the court, and a sealed copy served on CSA at its address for service (generally the solicitor on the record or CSA's postal address if a CSA officer is representing CSA).

If no defence is filed, CSA can apply for a default judgment. The judgment will be for the amount of the debt claimed, plus costs and interest. Costs are prescribed in the court rules, and generally relate to the amount of the debt. Interest is also calculated at a rate prescribed in the court rules. Judgment will be based on proof of service on the debtor on a particular day, and the lack of a response from the debtor. The court may reverse judgment at any time upon proof by the debtor that they did not receive personal notice of the claim.

If a defence is filed, the matter will proceed through any prelisting steps required by the court rules, and ultimately to a hearing. If an amount of money is found owing, judgment will be entered.

Garnishee orders

Garnishee orders are available under court rules. These orders can attach an ongoing source of earnings paid to the debtor, or appropriate a single payment due to the debtor. However, these orders have much the same effect as administrative powers already possessed by CSA (see collection from salary or wages and collection from third parties).

Warrant of execution

A warrant of execution is a request addressed to the bailiff or sheriff of the court, asking them to visit the

debtor's residence, or other place at which they may have assets. The bailiff or sheriff will seize any goods or possessions which they believe may be saleable in an attempt to satisfy the judgment debt. Often items such as cars, electrical equipment, whitegoods, or furniture, will be seized. Generally, clothes and equipment necessary to enable the debtor to pursue their employment are not able to be sold. Bailiffs hold auctions to sell the goods seized from debtors.

In more senior courts, where the debt is large, the sheriff may also have power to sell real estate, or land and fixtures.

Summons for oral examination

An application can also be made for a debtor to be summonsed to appear before a magistrate and to provide information about their assets and liabilities on oath. This can be useful where a debtor has complex business or overseas financial arrangements. Information obtained from an examination may be followed with other enforcement proceedings.

Version 1.3

< Previous Next >

5.4.4: Enforcement under the Family Law Act

Context

In addition to the enforcement powers contained in the Registration and Collection Act for civil recovery through state courts, CSA is able to take action to enforce outstanding child support liabilities under the *Family Law Act 1975*.

Legislative References

Sections 30, 67, 105 and 106 *Child Support (Registration and Collection) Act 1988*

Order 33 *Family Law Rules 1984* Chapter 20 *Family Law Rules 2004*

Divisions 25B.1 and 25B.2 Magistrates Court Rules 2001

Section 106 *Family Law Act 1975*

Part VII, Division 13A and Part XIIIA *Family Law Act 1975*

Explanation

CSA can bring proceedings in any court with family law jurisdiction including the Federal Magistrates' Court and state, local and magistrates' courts. The Family Law Act and Rules (and related Federal Magistrates Rules) apply to child support enforcement proceedings under the Registration and Collection Act as if the proceedings had been brought under the Family Law Act (section 105 Registration and Collection Act).

CSA is able to take action for recovery of a debt or to bring proceedings under Order 33 of the *Family Law Rules 2004 (Deputy Child Support Registrar v Froelich (1991) FLC 92-203)(*and the equivalent new rule: 20.01 of the *Family Law Rules 2004*).

Notice requiring financial information

A notice requiring financial information can be used to enforce a maintenance liability (Rule 20.10 of the Family Law Rules 2004 and Form 13; except for proceedings in the Federal Magistrates Court where Order 33 Rule 3(1) and (2) of the Family Law Rules 1994 and Form 45A apply). The notice can be used where the payment of money is required and can be issued by the Registrar of the court on the request of a person entitled to bring proceedings. A debtor who receives a notice is required to complete the form and return it within the required time. Although a relatively inexpensive step, there is no sanction for failure to respond to the written request for information. CSA does not usually request the court to issue a notice requiring financial information because CSA has power to obtain information under section 120 of the Registration and Collection Act, which provides a penalty for failure to respond.

Order for payment of the amount owed

If the debtor's obligation to pay does not arise from a court order (e.g. if the arrears relate to an administrative assessment of child support) the CSA must first obtain an order for payment of the amount before an enforcement order can be made (Rule 20.04 of the *Family Law Rules 2004* and Order 33 Rule 2(4B) of the *Family Law Rules 1994*).

Enforcement hearing (or summons)

An enforcement summons or enforcement hearing is available in relation to:

- all liabilities that are registrable maintenance liabilities registered under the Registration and Collection Act and payable to the Commonwealth under section 30, and

- any penalty for late payment of child support under section 67 of the Registration and Collection Act. (Rule 20.01(1)(a) and 20.01(2)(c) of the *Family Law Rules 2004* ; and Order 33 Rule 2(1)(a) of the *Family Law Rules 1994*).

They are not available for penalties for underestimating income, which are imposed under the Assessment Act.]

The debtor can be required to attend an enforcement hearing and produce documents (Rule 20.22 of the *Family Law Rules 2004*). In the Federal Magistrates Court a summons can be issued requiring the debtor to attend the court; produce documents and be examined (answer questions under oath before a Court Officer) (Order 33 Rule 3(1) of the *Family Law Rules 1994* and Form 45B).

On hearing the matter, the court can make any of a range of enforcement orders, including seizure and sale of goods or property, garnishee orders, or orders preventing the dissipation of property or assets.

An application for an enforcement summons or an enforcement hearing is not a prerequisite for proceedings for sale of property or garnishment but the examination allows CSA to examine the debtor and to select the most appropriate method of enforcement.

A Registrar of the court, or a magistrate, may refuse to issue a summons or require the debtor to attend an enforcement hearing where:

- the amount is too trivial,
- the examination is unnecessary as the information is already known,
- there is insufficient court time and a more convenient court is available,
- another court is geographically more suitable, or
- proceedings for variation are pending (Jools and McConnell (1995) FLC 92-553).

Enforcement orders available

The court can make various types of orders for enforcement of the debtor's obligation.
These include orders

- for garnishment of the debtor's assets or income
- for the payment of arrears
- sequestrating the debtor's estate or appointing a receiver
- for seizure and sale of the debtor's personal property
- for the sale of real property.

For more information about the orders that can be made by the Family Court of Australia and state and territory courts with family law jurisdiction, see Rule 20.05 of the *Family Law Rules 2004*. Order 33 Rule 3(9) of the *Family Law Rules 1994* sets out the orders that can be made by the Federal Magistrates Court.

Garnishee orders

The court has the power to make orders for the garnishment (or attachment) of the debtor's earnings or of money in bank accounts, etc., payable to the debtor (Part 20.4 of the *Family Law Rules 2004* and Order 33 Rule 4 of the *Family Law Rules 1994*). It is not usually necessary for CSA to seek these orders to enforce amounts outstanding for child support as CSA has similar powers to deduct child support from salary and wages orcan issue a notice against a third party under section 72A of the Registration and Collection Act without having to resort to court action.

Sequestration orders or appointment of a receiver

Part 20.5 and 20.6 of the *Family Law Rules 2004*

Order 33 Rule 6 of the *Family Court Rules 1994* (applies in the Federal Magistrates Court)

The court can order sequestration of a debtor's property, or the appointment of a receiver. These types of orders are useful if by obtaining possession of the property the sequestrator/receiver could obtain income due to the debtor. In most cases the powers provided to CSA bysection 72A of the Registration and Collection Act are sufficient for CSA in these circumstances. However, an order for sequestration or appointment of a receiver may be useful in cases where it is believed the respondent may dispose of assets prior to the execution of any enforcement order.

Orders for seizure and sale of real and personal property

Part 20.3 of the *Family Law Rules 2004*

Order 33 Rules 5 and 7 of the *Family Court Rules 1994* (applies in the Federal Magistrates Court)

The court can order the seizure and sale of the debtor's personal property. The court can order the appointment of a trustee to seize and sell personal property to enforce an order of the court, e.g. sale of a motor vehicle. As a matter of policy CSA will not request such an order, nor would the court necessarily grant an order, in circumstances where the vehicle was of a modest value and was the means of the debtor travelling to his or her place of employment.

The court can order the sale of real property to enforce an order for the payment of money.

The 'Twelve-Month' Rule

The 12 month rule is a common law rule which states that maintenance liabilities older than 12 months may not be recoverable in the courts, especially where there has been no application to enforce the liability and no special circumstances apply. The rule is discretionary but has been argued to apply to child support debts.

However, the Full Court of the Family Court in Hides v Hatton (1997) FLC 92-759 stated that the 12-month rule does not apply to:

- the making of departure orders under the Assessment Act,
- the payment of maintenance arrears owed for a period greater than 12 months, or
- orders made which have retrospective effect beyond 12 months,

as this law only applied prior to the Child Support legislation.

A court must not require that there be special circumstances that justify enforcing a maintenance order merely because the maintenance payable under it is more than 12 months in arrears (section 106 Family Law Act).

Contempt of court

Part VII Division 13A of the Family Law Act provides sanctions for contravention of orders made under that Act. In particular, a court can imprison a person who contravenes a parenting order for child maintenance by not paying child maintenance.

If a court ordered liability is not registered with CSA for collection and remains enforceable by the payee, contravention of the order may lead to the imposition of sanctions under the Family Law Act, including imprisonment.

However, the law allowing for imprisonment for contravention of a court order does not apply to a person simply because they have not paid child maintenance to CSA in accordance with registered liabilities. Where a court ordered liability is registered with CSA, a failure to pay the registered liability does not amount to a contravention of the order. Therefore, a person cannot be imprisoned because of failure to pay amounts which arise under a child support liability which is registered for collection.

A liability that is registered with CSA for collection will cease to be enforceable if the payee makes an election under section 38A to have the liability and/or arrears no longer enforced. If the payer fails to pay either the current liability or the arrears to the payee directly, that failure may amount to contravention of the court order. This may make the payer liable to imprisonment or other sanction, if the contravention was wilful.

If, after court enforcement action by CSA, a liable parent breaches the court order for payment, an action for contempt may be an option open to CSA.

Version 1.2

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

5.4.6: Setting aside a transaction

Context

A court has the power to prevent a payer disposing of property, or to set aside a transaction in which a payer disposed of property. The court must be satisfied that the transaction is being made, or was made, to defeat the payer's ability to pay child support or to meet a child support debt or liability owed to CSA.

Legislative References

Section 72C *Child Support (Registration and Collection) Act 1988*

Section 85 *Family Law Act 1975*

Explanation

The Registration and Collection Act gives CSA the power to apply to the court for an order to set aside a transaction if the court is satisfied that the transaction has been made to defeat or reduce the liable parent's ability to pay child support (section 72C). The court can also make an order without an application from CSA.

Example

> A payer with a significant debt sold his house to his brother for $200 000. It appears that this was not an 'arm's length transaction' (a genuine sale between unrelated persons at a fair market price) as the market price would have been about $400 000. It may be that there was an intention to avoid the payment of child support by selling the property. If an enforcement summons is currently being heard CSA should inform the court or else CSA can apply to the court to have the transaction set aside.

The wording of section 72C is similar to the wording of section 106B of the Family Law Act.

If the court is satisfied that the transaction has been made, or is proposed to be made, to reduce or defeat the payer's child support liability then the court can set aside the transaction. This will make the transaction void (section 72C(2)).

The court can order that any money can be taken to pay child support or costs. The court must consider any other people genuinely affected by the proceedings and can make orders to protect those people (sections 72C(3) and (4)). Where a property that has been sold is sold again to a bonafide third party for value the court will generally not set aside the transaction in order to protect innocent third parties who would otherwise be unfairly penalised.

The court can order the payer, or any person colluding with the payer in making the transaction, to pay the costs of:

- the payee,
- any third party genuinely affected, or
- CSA

which they incurred by making the transaction or the proposed making of the transaction (section 72C(5)).

Version 1.1

Issued 29 October 2003

< Previous Next >

5.6.2: Registrar-initiated ending of collection

Context

CSA can require parents to collect child support privately, despite the parents not having made an election for CSA to end collection of child support.

Legislative References

Section 38B *Child Support (Registration and Collection) Act 1988*

Regulation 5B *Child Support (Registration and Collection) Regulations 1988*

Explanation

From 1 July 1999, CSA can decide to stop collecting child support in a case where it is satisfied that the parents involved can make their own sustainable private collection arrangements.

CSA will only make a decision to require parents to make their own child support payment arrangements in cases where:

- The payer has a satisfactory payment record for the past 6 months; and
- CSA's satisfied that the payer will continue to pay their child support on time; and
- CSA is satisfied that private payment arrangements are appropriate for the parties involved.

Does a payer have a satisfactory payment record?

There are 3 prescribed criteria for deciding whether a payer has a satisfactory payment record (regulation 5B).

A payer can only have a satisfactory payment record if they have no arrears of child support and their liability has been registered with CSA for collection for at least the past 6 months.

The payer must also have either paid all their child support on time over the last 6 months, or there must be circumstances that satisfactorily explain the late payment.

All child support paid on time over the past 6 months.

Payers who have paid direct to CSA

A payer who makes payments directly to CSA will have paid their child support on time over the past 6 months if they paid their monthly liability in full over the past 6 months within 7 days of the due date.

Payers who have paid by employer withholding

CSA can collect child support by requiring the payer's employer to make deductions from the payer's wages or salary (i.e. employer withholding). CSA will be satisfied that a payer on employer withholding has paid their child support on time over the past 6 months if it received the full expected employer deduction in each of the past 6 months and the deductions covered the payer's full liability for each payment period.

Where the employer has deducted the scheduled amount from the payer's salary or wages, but remitted the deductions to CSA after the due date, CSA will still be satisfied that the payer has paid the amounts on time.

When an employer has not deducted sufficient to cover a payer's full liability in one or more payment periods in the past 6 months, the payer will still have a satisfactory payment record if they make the missing payments directly to CSA within 7 days of the due date.

Payers who have paid by non-agency payments (NAPs)

If part or all of a payer's child support liability for the past 6 months has been met by the credit of a non-agency payment (NAP), CSA will consider the date of that NAP and the period the payment was intended to cover. If the NAP was paid or transferred to the payee or to a third party within 7 days of the due date for the payment period in which the liability accrued the payer will have a satisfactory payment record.

Circumstances which satisfactorily explain late payment

A payer who has not paid all their child support on time over the past 6 months may still have a satisfactory payment record if there are circumstances that satisfactorily explain the late payment (regulation 5B(2)).

Retrospective variations to the liability

A payer may have had arrears of child support over the past 6 months which they have repaid by adhering to a satisfactory payment arrangement. If those arrears arose from a retrospective variation which was not due to the payer's action (or inaction), the payer can still be taken to have a satisfactory payment record.

Example

> CSA retrospectively increased M's child support assessment a year ago after F (the payee) applied for a change of assessment because of the extra costs of orthodontic work for their child. M was up to date with his child support payments before the increase. M has paid his new rate of child support on time each month since the increase. M did not have sufficient funds available to pay the full amount of arrears when they were due. M entered into a payment arrangement with CSA to repay the arrears over 8 months. M made all the agreed payments and his child support is now up to date.
>
> Although M had arrears over the past 6 months, M is taken to have a satisfactory payment record because there are circumstances that satisfactorily explain the late payment.

Where a retrospective variation was made because of the payer's inaction, they will not be taken to have a satisfactory payment record.

Example

> CSA reconciled F's income estimate 8 months ago after she lodged her latest tax return. F lodged the estimate after she lost her job. F did not advise CSA when she found another job 3 months later nor did she lodge a revised estimate. F was up to date with her child support payments while her child support was based on her estimate. F has paid the new rate of child support on time each month since the increase. F paid half the arrears when they were due, and entered into a payment arrangement with CSA to repay the balance over 3 months. F made all the agreed payments and her child support is now up to date.
>
> F is not taken to have a satisfactory payment record because the circumstances do not satisfactorily explain the late payment.

Other circumstances which satisfactorily explain late payment

There may be other circumstances which satisfactorily explain late payments. A payer may have been physically unable to make their usual child support payment by the due date because of an illness or injury, or because they were personally providing care for their spouse or child during a serious illness. However, the payer should also have paid their entire child support liability as soon as it was possible to do so.

Is the payer likely to continue to make their payments on time?

A payer who has made timely payments of child support for at least 6 months will generally be considered likely to continue to make their payments on time. Where the payer had a poor payment history before the 6 month period, CSA will consider whether the payer is likely to voluntarily pay their child support to the payee without CSA's involvement.

The following is a list of issues that CSA will consider when deciding whether a payer will continue to make their payments on time. This list is not exhaustive.

- Reasons for late payment of any monthly child support payment.
- The payer's co-operativeness in repaying this debt.

Whether CSA took any enforcement action in the past 12-18 months (including intercepting tax refunds).
- Where CSA has been collecting by employer withholding, whether there were arrears at the time that this commenced.
- Any statements by the payer that establish a clear intention not to pay if not compelled to do so.
- The reasons for the failure of any previous private arrangement within the past 12-18 months.
- If two or more private arrangements have failed in the last 3 to 5 years, the reasons for that failure.

Is private collection appropriate to the liability?

If the payer has a satisfactory payment record for the past 6 months and CSA is satisfied that the payer will continue to pay their child support on time, CSA must also be satisfied that private payment arrangements are appropriate in the circumstances of the case. CSA considers that it is appropriate for parents to make private payment arrangements if it is satisfied that those arrangements are sustainable. A private payment arrangement will not be appropriate if there are exceptional difficulties in the relationship between the parents, or between the parents and their children which could undermine the arrangement.

CSA will examine its file and computer system for the case for objective indicators of any exceptional difficulties in the relationship between the parents, or between the parents and their children.

Exceptional difficulties

Where one parent is reluctant to make private collection arrangements work, this will not generally be an exceptional difficulty. Exceptional difficulties could be a long term enduring nature (e.g. domestic violence) or of a more temporary nature (e.g. litigation). They may include, but are not limited to the following:

Family violence

Private collection is not appropriate in cases where there is a history of Family violence. (See chapter 6.10 Family violence). It may generally be inappropriate to require a person who has previously been exempted from having to take reasonable maintenance action by DSS or Centrelink to collect privately.

Illness

Private collection is not appropriate where a parent's physical or mental illness makes it unlikely that private arrangements would be sustainable.

Supervised contact

Private collection is not appropriate where the payer has 'supervised contact' with a child of the relationship.

Current or pending litigation

Litigation between the parents may indicate that private collection is not appropriate. It is irrelevant whether the litigation is about child support issues or an unrelated matter. Litigation can be a cause of stress or concern which may make moving to, or sustaining, private arrangements more difficult.

History of disputes

A history of disputes documented on CSA case (e.g. ongoing disputes about payments or care arrangements) may indicate that private collection would not be appropriate.

Version 1.0

Issued 1 October 2002

< Previous Next >

	complaints and learns from its mistakes.
Chapter 6.10	*Family violence* This chapter describes how CSA will manage child support cases where there is a risk of Family violence.
Chapter 6.11	*Compensation and waiver*

Version 1.1

Issued 22 July 2003

< Previous Next >

6.2.5: Access to employer records

Context

CSA can access the wage or payroll records of an employer.

Legislative References

Section 61 Child Support (Registration and Collection) Act 1988

Explanation

CSA's power to access employer records can only be used to access the salary or wage records (including information stored on a computer) of a payer's employer for the purpose of applying the employer withholding provisions.

Officers, authorised in writing by the Registrar, have the power to enter employer's premises and to access documents (section 61(1)). Officers can inspect, examine and copy documents that are relevant to the payer. They cannot gather information on any other person. Officers cannot remove documents.

Section 61 only applies to premises where the employer's records are kept (usually the employer's business premises). Where the relevant salary and wage records are in some other place (for example, the offices of the employer's accountant or the employer's home) officers may access those premises.

Authorised officers do not have power under the Child Support legislation to access the premises of banks and other financial institutions, parents, or any other third party. Officers can only access the premises of a bank or financial institution where the institution is the employer of the liable parent and the salary and wages records are held on the premises.

An officer seeking entry to an employer's premises must produce a current authority signed by the Registrar or State Manager. The authority must identify the officer and state that the officer is authorised to exercise the Registrar's powers under section 61. Officers who do not produce an authority cannot remain on the land or premises if requested to leave (section 61(2)).

If an employer wants to obtain professional advice, the search should be postponed temporarily. Officers should make arrangements to ensure there is no tampering with the records (e.g. the documents or copies of the documents could be sealed in an envelope or box with both the custodian of the papers and the officers signing an undertaking not to open the item until the advice has been received).

Any claim that the records are subject to legal professional privilege will be resisted on the grounds that wage records are created to record payments to employees, not for the purpose of obtaining legal advice.

The employer may commit an offence if they do not provide reasonable assistance to an authorised CSA officer (See chapter 6.8).

Although the access provisions do not grant a right to conduct an interview, many interviews proceed on an informal basis without recourse to a formal notice. These informal discussions will usually reduce the cost of compliance, as the person is not required to attend the office for an interview or to produce the required records under a formal notice.

Employers can refuse to answer any questions other than those specifically related to the location of records. Where officers have reasonable grounds for requiring the employer to answer other questions about the documents and the employer is unwilling to reply informally, CSA can later prepare and issue a notice under the appropriate information and evidence-gathering provision.

Version 1.3

Issued 27 June 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.4.1: Subpoenas

Context

A court may issue a subpoena which requires CSA to produce information about a customer. CSA may also be served with a notice to produce documents to a party to court proceedings.

Legislative References

Section 6 *Privacy Act 1988*

Section 13 *Public Service Act 1999*

Regulation 2.1 *Public Service Regulations 1999* (APS Code of Conduct)

Section 16 *Child Support (Registration and Collection) Act 1988*

Section 150 *Child Support (Assessment) Act 1989*

Sections 32 and 35 *Service and Execution of Process Act 1992*

Parts 13.4 and 15.3 *Family Law Rules 2004*

Part 6 and Division 15.3 *Federal Magistrates Court Rules 2001*

Explanation

What is a subpoena?

A subpoena is a court document issued at the request of a party to court proceedings. A subpoena requires a person to produce documents or to attend court to give evidence in those proceedings. A subpoena is an order for someone to provide information to a court. It does not require them to provide the information to a party to the court proceedings.

A court can impose penalties upon a person who fails to comply with a subpoena.This can include a warrant for the person's arrest (Rule 15.36 Order 28, rule 8, Family Law Rules 2004, Rule 15.23 Federal Magistrates Court Rules 2001).

When is a subpoena valid?

A subpoena is valid if:

- it is served properly, and
- the person who asked the court to issue it provides conduct money.

The person who asked the court to issue the subpoena is responsible for serving it. They do this by delivering a sealed copy of the subpoena to the person who is required to attend court to give evidence or provide copies of documents. Under the Family Court Rules (Rule 15.22) a subpoena cannot be served on a person

by mail. However, in the Federal Magistrates Court a subpoena which requires the production of documents, rather than attendance in court, can be served by mail or facsimile (Part 6 Federal Magistrates Court Rules 2001).

Where the subpoena requires CSA Registrar or a Regional Registrar to produce documents another CSA officer can accept service on their behalf.

Where the subpoena requires a person to attend court to give evidence a CSA officer will contact that person to arrange for them to accept service personally.

A subpoena is generally required to be served no less than 7 days before the person is required to produce the documents to the court, or attend the court to give evidence. However, some Acts and Court Rules allow a subpoena to be served less than 7 days before the date the documents or evidence are required. In practice this occurs relatively frequently. If insufficient time has been given to comply with a subpoena or the date nominated is highly inconvenient, an extension of time for complying with the subpoena can be sought.

The person named in the subpoena is entitled to 'conduct money' from the person who asked the court to issue it. Conduct money is an amount sufficient to cover the cost of the named person's return travel to the court from home or their place of employment, as appropriate. It is not meant to cover the cost of searching, collating or copying documents. CSA will pay conduct money into consolidated revenue. It will refund any conduct money to the person if they decide not to call on the subpoena.

When will CSA comply with a subpoena?

CSA will comply with a valid subpoena by providing documents or evidence to a court:

- if it is required to do so, or
- if it is in the public interest for CSA to comply

In deciding whether to comply CSA has to take into account its obligations to protect customer information under the:

- secrecy provisions in the child support legislation;
- Privacy Act and privacy principles, and
- Public Service Act and regulations.

Secrecy provisions in the Child Support legislation

It is an offence for a CSA officer or employee to provide protected information about a person to another person. Protected information is any personal information that CSA employees or contractors obtain in the course of their duties. (See chapter 6.3 Privacy, secrecy and proof of identity)

It is not an offence under the Child Support legislation for a CSA employee to provide information to a court, because a court is not a person (*FCT v Nestle* (1986) 69 ALR 445). However, unless the information is necessary for the purposes of the Child Support legislation, CSA is not required to provide it (section 16(5) Registration and Collection Act and section 150(5) Assessment Act). This means that CSA can be required to comply with a subpoena that relates to an action under the Child Support legislation, but only where the documents or information required is necessary for the purposes of that legislation.

Privacy Act and privacy principles

CSA cannot disclose personal information about a person to another person, body or organisation unless that disclosure is required under or authorised by law (Information Privacy Principle 11 or IPP11).

If CSA provides information to a court under a subpoena it does not breach IPP11. The information is required by law under the subpoena and the secrecy provisions in the child support legislation (see above) do not prevent the release of information to a court.

Public Service Act and regulations

The Public Service Act and Regulations set out a code of conduct for employees in the Australian Public Service (section 13 Public Service Act and Regulation 2.1 Public Service Regulations). A CSA officer or employee must not give or disclose information they obtained in the course of their duties to any person, directly or indirectly, except if they do so in the course of their duties.

If a CSA officer provides information to a court under a subpoena they must comply with their responsibilities under the Public Service Act.

When is CSA required to provide information or documents to a court?

CSA is required to comply with a subpoena that relates to an action under the child support legislation, but only where the documents or information required are necessary for the purposes of that legislation (section 16(5) Registration and Collection Act and section 150(5) Assessment Act).

When CSA is served with a subpoena it must establish whether the subpoena relates to proceedings taken by either the payer or payee that are for the purposes of the Assessment Act or the Registration and Collection Act. The term 'purpose' is not defined in the legislation.

Generally, it will mean that the application to the court is brought under one of the provisions of the Assessment Act or the Registration and Collection Act. An application for judicial review of CSA's decision under the Assessment Act or the Registration and Collection Act would also be proceedings for the purposes of the child support legislation (See chapter 4.3 Court applications and orders).

Proceedings under the Family Law Act such as property settlement or contact and residence applications are not proceedings for the purposes of the child support legislation, even though the result may have some effect on the person's child support.

Secondly, CSA need only provide protected documents that contain personal information about the other parent in the case to the court if it is **necessary** for the purposes of the child support legislation. The Full Court of the Family Court in *Furnari and Clark* (Melbourne , 16 June 2003 , unreported) held that notes made by a CSA decision-maker in relation to decisions about a change of assessment and non-agency payments were not necessary for an application for a departure from the assessment or an appeal. Finn J commented that the terms of a subpoena were extremely wide and that any subpoena to CSA 'should be drawn with particularity' (cf *National Crime Authority v Gould & Anor 91989) 90 ALR 489*).

CSA will carefully examine the documents required by a subpoena to decide whether they are necessary for the purposes of the child support legislation. What is necessary will depend on the nature of the document and the type of proceedings.

Example

> M has applied to the Federal Magistrates Court for a declaration that F is not entitled to an assessment of child support payable by M under section 107 of the Assessment Act. The Federal Magistrates Court issues a subpoena, at M's request, requiring CSA to produce documents that include information from financial institutions about F's loans and accounts. Financial information is not relevant to these proceedings. Even though there are proceedings under the Assessment Act the information is not necessary for the purposes of that Act.

When will it be in the public interest for CSA to comply with a subpoena?

There may be occasions where CSA is not required to comply with a subpoena under section 16(5) of the Registration and Collection Act or section 150(5) of the Assessment Act but where it would be in the public interest for CSA to provide the information to the court. As the secrecy provisions in the child support legislation and the provisions of the Privacy Act and the Public Service Act and regulations do not prevent CSA from providing information to a court, CSA may provide information to a court under a subpoena if a CSA officer believes the interests of justice outweigh the interference with personal privacy.

The form in which CSA will provide information to the court.

In all cases where a person has indicated that they intend to call on a subpoena, CSA will gather all relevant original documents, or copies, containing the information covered by the subpoena and bring, or send, them to the court. If documents provided to the court contain protected information CSA will advise the court of the nature of the information and any known sensitivities.

CSA will formally oppose production of any material not necessary for the purposes of the child support legislation or may apply to the court to have the subpoena set aside if the information sought is not relevant, is oppressive or too burdensome, is too wide, or is privileged.

CSA will usually be legally represented and will seek an order for legal costs for its appearance in court.

The Registry of the court that issued the subpoena will hold any documents that CSA produces until the proceedings are finalised.

What is a notice to produce documents?

CSA may also be served with a notice to produce documents. For instance, a party to court proceedings in the Family Court, or a court operating under the Family Court Rules, may serve a Notice of Non-party Production of Documents on a person who is not party to the matter (Rule 13.33 Family Law Rules 2004).

A notice to produce documents is different from a subpoena as it requires the non-party to provide the documents specified to the requesting party rather than a court. Notices to produce are also usually issued in preliminary stages of court proceedings.

The requesting party is required to serve a copy of the notice to produce on the other parties in the matter. Both the person served and the other parties are given an opportunity to object to the court.

If the documents requested in a notice to produce contain protected information about another person (see Secrecy provisions in the Child Support legislation above), CSA cannot produce them to the requesting party. Where CSA is not able to comply, CSA will object to production of the documents sought. CSA will usually be legally represented and will seek an order for legal costs for its appearance in court.

Version 1.2

Issued: 27 June 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.5.1: Forwarding documents and substituted service

Context

In limited circumstances, CSA can assist a parent who does not know the address of the other parent by forwarding documents to that other parent.

Legislative reference

Section 150 *Child Support (Assessment) Act 1989*

Section 16 *Child Support (Registration and Collection) Act 1988*

Explanation

The purposes and objects of the Child Support legislation

The secrecy provisions in the Child Support legislation prevent CSA disclosing a customer's address to any other person, including the other parent (See chapter 6.3). However, CSA can forward a document to a parent at the request of the other parent or another person if it is necessary to do so for the purposes of the Child Support legislation, or where forwarding the documents will further the objects of the legislation.

Service of legal documents

CSA will pass on legal documents that relate to any proceedings under or related to the Child Support legislation. This is necessary for a person to exercise their rights under the Child Support legislation. The following types of legal proceedings are under or related to the Child Support legislation:

- legal proceedings under the Assessment Act or the Registration and Collection Act
- legal proceedings for judicial review of CSA decisions under the Administrative Decisions (Judicial Review) Act or the Judiciary Act
- legal proceedings under the Family Law Act for the variation of a registered maintenance liability. CSA will not forward documents that relate to any other proceedings under the Family Law Act.

When CSA receives documents from a customer or solicitor with a request that they be forwarded to the other parent, it must examine the documents and be satisfied that they contain information that is relevant to the proceedings and no other information.

CSA will forward the documents by registered mail to the parent's last known address. The officer who mailed the document will swear an affidavit that the document has been posted in that manner and return it to the person who asked CSA to forward the document. It is not necessary for the officer to wait for certification that the mail has been successfully delivered.

This process is referred to as substituted service.

Court-ordered substituted service

CSA will comply with any court order for substituted service in relation to any court proceedings.

CSA will send the documents by registered mail to the parent's last known address. The officer who mailed

the document will swear an affidavit that the document has been posted in that manner and return it to the court. It is not necessary for the officer to wait for certification that the mail has been successfully delivered.

Forwarding other documents

CSA will forward other types of documents to a customer when doing so will further the objects of the legislation. Documents of this type include draft agreements in stage 2 cases or proposals for agreement to change a court order in a stage 1 case.

CSA will not forward these documents if it is aware that there are any court orders in place that prevent contact between the parents. This may include apprehended violence orders made under state legislation or protection orders made under the Family Law Act.

In other cases CSA will make every effort to contact the other parent and obtain their consent for the document to be forwarded. CSA will not forward the documents without the consent of the other parent if it has an indication in its records of domestic violence or child abuse.

CSA will send the documents by ordinary mail to the parent's last known address. CSA will confirm in writing that the document has been forwarded.

Version 1.1

Issued 27 June 2006

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.6.1: Documents held by CSA

Context

CSA produces and/or retains numerous documents including some which are available free of charge. While some documents are generally available, others may be available under the FOI Act.

Explanation

Documents held by CSA may be categorised as:

- agendas for, and minutes of, meetings of senior officers within CSA
- Ministerial, inter-departmental and general correspondence
- internal administration papers and records
- Child Support legislation, procedural instructions and policy documents
- reports relating to research and projects undertaken by CSA
- proposals for legislation, drafting instructions and draft legislation
- copies of instruments of delegation, given to, or by, the Child Support Registrar
- requests for legal advice and copies of notes of advice given
- briefing papers prepared for, and submissions to, the Minister or the Government
- answers to parliamentary questions, correspondence, reports and other documents relating to the structure of CSA and the number, size and location of offices
- correspondence, reports and other documents concerning human resource management by CSA
- training materials
- Freedom of information request files and papers relevant to the consideration of those requests
- child support paper documents and computer records containing personal information of individuals
- transcripts of proceedings before courts and tribunals
- financial reports, expenditure estimates and expenditure reports
- statistical reports detailing the number of child support cases, assessments issued and amounts collected
- accounting records
- speeches by senior CSA officers, media releases and press clippings, and
- CSA business plan.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.6.2: Gaining access to documents

Context

Wherever possible, CSA will make documents available to a person without requiring them to apply under the FOI Act. This topic explains when CSA will require a person to formally request access under the FOI Act, and how CSA will deal with FOI applications.

Legislative References

Freedom of information Act 1982

Freedom of information (Fees and Charges) Regulations 1982

Explanation

CSA makes child support forms, brochures, booklets and CSA policy freely available to the public. Many of these documents are available on CSA's website at www.csa.gov.au..

Also, CSA often receives requests from customers and stakeholders who seek access to other documents held by CSA. In responding to these requests CSA will provide access to documents without the formalities of a request under the FOI Act where possible.

In some situations CSA will require a request under the FOI Act.

Informal requests

Requests under the FOI Act

Informal requests

CSA guidelines and policies are available to the public upon request. In addition copies of documents that have been sent to CSA (including letters and forms) will be made available to the person who sent them on their request. CSA will also provide records of conversations with CSA staff on the request of the person involved in the call and will provide copies of court orders and agreements to the parents involved.

Example

> A payer asks for a copy of the child support agreement and the Application for Acceptance form that was lodged. A CSA officer sends the payer a copy after deleting personal details of any other person which may have been recorded on it (e.g. tax file number, address, phone number, Centrelink identifier).

Where a request includes documents containing information about other people a request under the FOI Act is needed. This includes requests for copies of letters or records of telephone conversations about the applicant between CSA and another person and documents exchanged between CSA and the other parent.

Example

> A payee requests access to the 'whole CSA file' involving the payee. As CSA records for the payee's child support entitlement would include documents containing information about third parties an FOI request would be necessary.

Requests under the FOI Act

How is an application under the FOI Act made?

What fees and charges apply?

The *Freedom of information Act 1982* (the FOI Act) was introduced to extend the right of every person to information held by Government and/or its agencies. An applicant does not have to provide a reason for requiring access. The FOI Act extends the right of every person to access to information in the possession of the Federal Government in 2 ways.

- Government agencies must publish information about their operations and powers affecting members of the public as well as their manuals and other documents used in making decisions and recommendations affecting the public.
- Government agencies must provide access to documents in their possession unless the document is within an exception or exemption specified in the legislation.

Understandably, access to all documents in the possession of the Government is not possible as confidentiality must be maintained where it is necessary for the protection of essential public interests and the private and business affairs of persons and organisations in respect of whom information is collected.

How is an application under the FOI Act made?

Formal applications for access to documents under the FOI Act must:

- be made in writing
- give as much information as possible about the documents sought
- specify an address in Australia for the service of notices, and
- be accompanied by an application fee or a request for the waiver of the fee.

Requests under the FOI Act may be lodged at any CSA office or posted to the FOI contact officer.

Generally copies of documents requested under the FOI Act are posted to the applicant. Documents requested may also be viewed at CSA offices.

What fees and charges apply?

The FOI Act provides that fees and charges may be levied for the provision of information. The rates for fees and charges are fixed in accordance with the FOI (Fees and Charges) Regulations at:

- Application fee for access and/or amendment $30
- Charge for locating documents $15 per hour
- Charge for decision-making and consultation $20 per hour
- Charge for copying 10 cents per page
- Charge for inspecting documents $6.25 per hour
- Application fee for internal review $40

Requests for personal information can incur a maximum charge of 2 hours for locating documents and a further 2 hours for decision-making. However, the full rates for the provision of access apply.

Waiver of fees and charges

Fees and charges can be waived (in whole or in part) for any reason, including financial hardship or that the access is in the public interest.

If an FOI request is received without the prescribed fee and CSA is unable to satisfy the request through other administrative means CSA will advise the applicant of the waiver provisions in the FOI Act. The legislation expressly refers to financial hardship and public interest as relevant reasons in deciding whether to

remit an application fee or reduce a charge. However, if an application for waiver or reduction is received all other relevant reasons must be taken into account. In considering a request for remission of an application fee or to reduce a charge CSA will consider all relevant factors it is aware of, whether or not they have been raised by the applicant.

While the applicant's reasons for seeking the document are not relevant in deciding whether or not to grant access, they can be taken into account in considering an application for remission of a fee, or reduction, or non-imposition, of a charge.

The fact that the applicant has requested access to documents containing *personal information* about them will be a relevant reason. Whilst this is not conclusive, where an individual applicant makes an application in relation to their personal information CSA will usually remit any fees and charges that would be imposed in relation to the application. This is particularly the case if it is the first application that the person has made to CSA under the FOI Act in relation to the particular information.

If an applicant has made multiple applications in relation to the same issue or series of documents containing their personal information the applicant's reasons and circumstances will be taken into account in deciding whether fees and charges should be imposed.

Where an applicant seeks remission, reduction or non-imposition of fees and charges on the basis of *financial hardship* a detailed inquiry into the individual's means is not justified. Where a person is in receipt of a modest income or an income tested benefit or pension CSA will accept that payment of the fee or charge would cause financial hardship.

Where an applicant applies for internal review of a decision and the only issue on review is the imposition of fees and charges CSA will waive the fee for the internal review.

Decision-making time

A valid FOI request must be acknowledged within 14 days of receipt by the agency (section 15(4)). The applicant must be notified of the decision and the reasons for the decision within 30 days (section 15(5)). However, if it is necessary to consult with third parties that period is extended by another 30 days (section 15(6)).

What documents are covered by FOI?

The FOI Act allows access to documents held by government agencies. The definition of 'document' is broad and includes written documents, photographs, drawings, and computer records (section 4(1)). However, the FOI Act does not require agencies to make available information which is not already in documentary form apart from producing printouts or transcripts of material stored on computer or in sound recordings.

Access to documents can be refused if:

- The work involved in processing the request would substantially and unreasonably divert the resources of the agency from its operations (section 24)
- All reasonable steps have been taken to find the document(s) and the agency is satisfied that the document cannot be found, or does not exist (section 24A).

Also, an employee, or former employee, of an agency which has established procedures to allow employees, or former employees, access to their own personnel records must first use those procedures (s15A).

What types of documents are exempt?

Exemptions are based on what is essential to maintain our system of government and on what is necessary to protect the legitimate interests of third parties who provide information to Government. The exemptions are designed to provide a balance between the rights of applicants to disclosure of government held documents and the need to protect the legitimate interests of government and third parties who deal with government. The exemptions listed in the FOI Act are based on the premise that disclosure of the particular information would:

- breach personal privacy, confidentiality or secrecy requirements; or
- cause damage to business interests, Commonwealth/State relations or law enforcement; or
- have an adverse effect on operations of agencies or their decision-making processes.

In certain circumstances, documents relating to the following categories (where their release could damage Government or third party interests or other public interests) are exempt:

- Documents relating to national security, defence or international relations (section 33)
- Documents relating to Commonwealth/State relations (section 33A)
- Cabinet and Executive Council documents (section 34 and 35)
- Internal working documents (section 36)
- Documents relating to enforcement of the law and protection of public safety (section 37)
- Documents to which secrecy provisions of other laws apply (section 38) (more information about CSA's secrecy provisions)
- Documents relating to financial or property interests of the Commonwealth (section 39)
- Documents relating to the certain operations of agencies (section 40)
- Documents containing personal information (section 41)
- Documents subject to legal professional privilege (section 42)
- Documents relating to business affairs and research (section 43 and 43A)
- Documents relating to the national economy (section 44)
- Documents containing material obtained in confidence (section 45)
- Documents disclosure of which would be contempt of Parliament or contempt of Court (section 46)
- Certain documents arising out of companies and securities legislation (section 47)
- Electoral rolls and related documents (section 47A)

Exemptions should only be claimed where the relevant information is genuinely sensitive and real harm will be caused by its disclosure. An exemption should not be claimed just because it is technically available.

Consultation before release of documents.

Where a request is made for access to a document containing:

- information relating to the business or professional affairs of a person,
- the business, commercial or financial affairs of an organisation or undertaking,
- the personal information of a person other than the applicant, or
- information that concerns Commonwealth/State relations

there are procedures set down in the FOI Act (sections 26A, 27 and 27A) for consultation with third parties. The procedures ensure that the person, organisation or State is to be consulted, where practicable, before a decision to release the document is taken. If a decision is made to give access to the document the person or organisation may seek internal review (section 54) and may apply to the Administrative Appeals Tribunal (AAT) for a review of that decision (section 55).

What are the rights for review?

Where a decision has been made not to grant access to documents or where a decision has been made to disclose a document not withstanding contentions to the contrary by a third party, there is an entitlement to have that decision reviewed by the agency concerned (section 54). An internal review must be sought before an appeal can be made to the AAT (section 55).

An applicant can apply to the AAT for a review of a decision made on internal review or a deemed refusal of a request. The AAT can also review decisions to defer access or to impose charges in relation to a request for access. The AAT has power to change the original decision.

An applicant may also ask to have an agency's decision or delay investigated by the Commonwealth Ombudsman. The Ombudsman can review FOI decisions to make sure they were made in a fair and proper way. The Ombudsman can't change a decision, but can recommend that this be done. The Ombudsman won't usually investigate until a decision has been reviewed internally.

What can be done if the information held by CSA is incorrect?

A person who has lawfully been provided with access to a document containing his or her personal information (whether under the FOI Act or not) may request an agency to amend it if the information is incomplete, incorrect, misleading, or out of date (section 48).

If the agency grants the request an amendment is made by amending the record or adding a notation.

A decision on an application for amendment must be made within 30 days. If the agency fails to make a decision or refuses to make the amendment, the applicant can apply to the AAT for a review of the decision.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.7.1: Methods of service

Context

Various provisions in the Child Support legislation allow CSA to give a 'notice in writing' or a 'written notice'. That means CSA must write to a person to give them some information or tell them to do something. A notice must be served on the person who is required to receive, or comply with, the notice.

'Service' is delivery to the person who will be affected by the notice. The essence of service is that the relevant document must reach the person on whom it is to be served (*Holmes and Ors v DFC of T 88 ATC 4906*). A notice will be deemed to have been effectively served if it can be proved that the addressee actually received it.

There are various ways, or methods, in which a notice can be served on a person. Depending on the method of service there are rules that determine when the notice was served. In most cases CSA will serve a notice by post.

Legislative References

Regulation 11A *Child Support (Assessment) Regulations 1989*

Regulation 14 *Child Support (Registration and Collection) Regulations 1988*

Sections 160 and 163 *Evidence Act 1995*

Section 5 *Electronic Transaction Act 1999*

Explanation

Personal service

This is where a notice is handed to a person. Personal service is the most effective method of service of notices as there is direct evidence of receipt. However it is not convenient or efficient to rely on personal service in all cases.

If a notice is personally served CSA will generally use a process server.

The person served has to be informed of the nature of the notice at the time it is handed to them. If a person refuses to take possession of the notice it can be left near them.

The person who served the notice should complete an affidavit of service which verifies that they gave the notice to the person it was addressed to.

Service by post

Other methods of service are available (regulation 11A Assessment Regulations and regulation 14 Registration and Collection Regulations) by:

- leaving the notice at the person's address for service, or
- sending the notice by prepaid post to the person's address for service.

A company can be served by leaving a notice at, or mailing a notice to, the company's head office, registered office, or principal office.

If postal service is used the notice can be sent by normal prepaid post, by express post or registered post.

Service by post is deemed to occur at the time it would arrive in the ordinary course of the post. In

proceedings in relation to offences under the Child Support legislation a notice is presumed to have been received 9 days after the date it was prepared (sections 160 and 163 Evidence Act) unless it can be proved otherwise.

Service by facsimile

A notice can be served by facsimile. However, CSA's policy is that notices are usually sent by post. In limited circumstances notices will be served by facsimile, for instance:

- if there is a pre-existing arrangement with the recipient to accept notices in that way, such as notices issued to Centrelink in relation to Family Tax Benefit; or
- where necessary to ensure that an opportunity to collect child support is not missed.

If a notice is served by facsimile CSA will confirm with the recipient that the notice was received and that it was legible.

A copy of a posted notice may be sent by facsimile This may be particularly helpful if the urgent attention of the recipient is required but the faxed copy does not replace the notice sent by mail.

Service by email

If a person consents to receiving notices or other communications by way of electronic communication a notice can be served by email on that person. Express consent is not required, but can be reasonably inferred (section 5 Electronic Transactions Act).

Where a notice is served by email it is received at the time it enters the person's email system.

Version 1.1

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.7.2: Address for service of notices

Context

In order to be properly served a notice must be addressed correctly.

Legislative References

Section 62, 63, 111 and 115 *Child Support (Registration and Collection) Act 1988*

Regulations 15 and 16 *Child Support (Registration and Collection) Regulations 1988*

Regulation 11B *Child Support (Assessment) Regulations 1989*

Explanation

The most recent address for service that has been provided to CSA is that person's address for service (regulation 15 Registration and Collection Regulations and regulation 11B Assessment Regulations). An address for service can be the person's physical address (eg, home or postal) or an electronic address for the delivery of notices.

If no address for service has been given to CSA, or CSA is aware of a later address, the address for service is the person's last address as recorded by CSA. A payer is required to notify CSA if they change their address (section 111 of the Registration and Collection Act).

A person who changes their address but does not give CSA a new address for service cannot use that as a defence in any proceedings under the Registration and Collection Act and Regulations (regulation 16 Registration and Collection Regulations).

Addressing a notice to a partnership

A notice may be issued to any member of a partnership. A notice to a partner in a partnership can be addressed in either of the following ways:

- Mr James A Brown
  Partner in Brown and Smith
  Trading as ABC Printing
  at address for service of notices
- Messrs Brown and Smith in Partnership
  at address for service of notices

In the 2 examples above, references to the partnership in the body of the notice would specify 'ABC Printing' and 'Messrs Brown and Smith' respectively.

Addressing a notice to a company or trust estate

Under the Income Tax Assessment Act, a company or trust must have a 'public officer' and an address for service of that public officer. The public officer and address for service for taxation purposes are also the public officer and address for service for the Registration and Collection Act and (sections 62 and 63 Registration and Collection Act).

A notice served on a company should be addressed as follows:

The Public Officer
Company name
Address for service of notices

As the company is the 'person' liable to comply with the notice, the company and not one of its employees (e.g. a director) is required to be served with the notice.

A notice served on a trust estate should be addressed as follows:

The Public Officer
Trust estate name
Address for service of notices

The trustee of the trust estate is the 'person' liable to comply with the notice.

Service on the public officer at the address for service is sufficient service on the company or trustee for the purposes of the Registration and Collection Act. Proceedings against the public officer are deemed to be proceedings against the company or trustee.

A notice forwarded to a Commonwealth, State or Territorial department should be addressed to the 'Paying Officer' at the postal address of the department.

Notices to attend and give evidence (See chapter 6.2) can only apply to a natural person. Notices can be addressed to a company director or other officer of the company rather than a company itself.

Version 1.2

Issued 23 January 2008

< Previous Next >

6.7.3: Proof of service

Context

CSA may need to provide proof of service of a notice.

Explanation

There are 2 ways in which effective service of a notice can be proved:

- by ensuring the notice has come to the attention of the person being served, or
- by deemed receipt through service by post or delivery.

If a notice is personally served an affidavit should be prepared. The affidavit should detail the date, time, place and persons involved. It should also record any conversation between the server and the recipient of the notice.

If postal service is used a record should be made concerning addressing, prepaying and posting the letter. These details can be included in an affidavit if required.

If a notice is served by facsimile the arrangement made with the recipient concerning service should be recorded. A record of the transmission of the facsimile should also be retained.

Version 1.1

Issued 29 October 2003

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.7.4: Service and evidence

Context

The Registration and Collection Act and regulations contain provisions to assist with the production of evidence in court and with the service of documents. The Registrars powers are also delegated to State Managers (see 6.1.2 Delegation of powers).

Legislative References

Section 115, 116 and 118 *Child Support (Registration and Collection) Act 1988*

Regulations 11 and 13 Child Support (Registration and Collection) Regulations 1988

Explanation

Substituted service

Where a document is required to be served on a person in relation to enforcement proceedings under the Registration and Collection Act (other than to recover an overpayment to a payee), and

- CSA is satisfied, after making reasonable enquiries, that the person is absent from Australia and does not have a lawyer or agent representing them in Australia, or cannot be found;
- the document can be served by posting it, or a sealed copy of it, in a letter to the person's last known address.

There is no need to seek the court's permission for this method of service (section 115).

This provision overrides requirements contained in other legislation, e.g. the requirements in the Family Law Act, rules or regulations, which require the court to make orders for substituted service.

Evidence

A document signed by the Registrar or a State Manager which claims to be a copy of an entry in the Child Support Register in relation to a registrable maintenance liability is conclusive evidence (section 116):

- that the liability is a registrable maintenance liability (except in an objection, application for review or appeal, about the registration of the liability or the particulars in the Register);
- that the liability is registered under the Act (except in an objection, application for review or appeal, about the registration of the liability or the particulars in the Register);
- that the particulars of the register entry are those set out in the document (except in an objection, application for review or appeal about particulars in the Register that have been varied);
- that all of those particulars are correct (except in an objection, application for review or appeal, about the registration of the liability or the particulars in the Register).

Conclusive evidence is evidence which cannot be disproved, despite any other evidence to the contrary. Apart from the exceptions above, where CSA produces a copy of an extract from the Register in any proceedings, it is evidence that the liability is correct, registered and is a registrable liability (section 116(1)).

The Registrar or a State Manager's certificate saying that an amount is payable on a specified day by a person to the Commonwealth for a child support liability is prima facie evidence of the matters stated in the certificate (section 116(2) and regulation 11).

The Registrar or a State Manager's certificate saying that an amount is payable on a specified day by a person to the Commonwealth in relation to a deduction from salary or wages is prima facie evidence of the

matters stated in the certificate (section 116(2)).

'Prima facie' evidence is evidence of fact which the court must take as proof until there is evidence to disprove it.

Example

> A certificate stating how much child support is owing could be disproved by further evidence in court proceedings.

Judicial notice of signature

A court, tribunal, judge, or person acting judicially, will take judicial notice of the signature of a person who holds the office of Registrar or State Manager (section 118). 'Judicial notice' means that a court must take notice of things which are clearly established and formal evidence on the issue is not necessary. This means then that a court or tribunal will not require any further evidence that the signature is the signature of the Registrar or State Manager.

A document bearing the written, printed or stamped name of the Registrar or State Manager (including a facsimile of the signature) is taken to have been duly signed by that person unless it is proven to the contrary (regulation 13).

Version 1.3

Issued 23 January 2008

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.8.1: Employer offences

Context

The Registration and Collection Act imposes specific duties on employers of payers. The legislation also contains offence provisions for breach of those duties.

Legislative References

Sections 46, 47, 57, 58, 59, 60 and 121 *Child Support (Registration and Collection) Act 1988*

Explanation

Failure to make deductions from salary/wages

An employer who fails to make deductions from salary or wages paid to an employee as required by a notice given by CSA commits an offence (section 46). The maximum penalty is $1,000.

Failure to pay deducted amounts to CSA

Where an employer makes deductions from an employee's salary or wages, the employer must pay the amounts deducted to CSA by the 7th day of the following month. Failure to pay amounts deducted to CSA is an offence. The maximum penalty is a fine of $5,000 and/or imprisonment for 6 months (section 47(1)(a)).

Failure to notify CSA of deductions

Where an employer makes deductions from an employee's salary or wages, the employer must notify CSA of the deductions by the 7th day of the following month. Failure to notify CSA is an offence. The maximum penalty is a fine of $5,000 and /or imprisonment for 6 months (section 47(1)(b)).

In addition, a court can order that the employer comply (section 121).

Failure to notify CSA that no deductions were made

Where an employer made no deductions in a particular month (for example, because no payments were made to the employee or the amount paid to the employee was below the protected earnings level) they must notify CSA by the 7th day of the following month. Failure to notify CSA is an offence. The maximum

penalty is a fine of $1,000 (section 47(1A)).

Failure to notify the employee of deductions made or that no deductions were made

Where an employer, who has been required by CSA to make deductions from an employee's salary or wages, makes a payment to the employee, the employer must notify the employee of the amount deducted or that no amount has been deducted. Failure to notify the employee is an offence. The maximum penalty is a fine of $1,000 (section 47(2)).

Failure to notify CSA of employee ceasing employment

Where an employee's employment ceases, the employer must notify CSA by the 7th day of the following month. Failure to notify CSA is an offence. The maximum penalty is a fine of $500 (section 47(3)).

Employer not to prejudice employee or potential employee

An employer must not do any of the following things to an employee or potential employee:

- refuse to employ or pay salary or wages,
- dismiss or threaten to dismiss,
- terminate or threaten to terminate payment of salary or wages,
- prejudice or threaten to prejudice in their employment or in ways other than through receipt of salary or wages,
- intimidate or coerce, impose any pecuniary penalty or take any disciplinary action,

because the person

- is a payer of a liability which can be, or is registered with CSA, or
- is a CSA customer for whom the employer is required to make child support deductions from their salary or wages.

The provision is not limited to parents who are already CSA payers.

It is not necessary for the prosecution to prove the reason for the employer's action. It is a defence if the employer proves, on the balance of probability, that their actions were not motivated (in whole or in part) by one of the specified reasons.

This offence is punishable on conviction by a fine of up to $2,000. In addition a court can order a convicted person to pay compensation to and/or take other action to reduce the loss or damage suffered by the victim (section 57).

Employer not to disclose information

Neither an employer nor any person performing duties for an employer can directly or indirectly divulge information about the deduction of child support from a payer's wages. This offence is punishable on conviction by a fine of up to $1,000 (section 58).

Records to be kept and preserved

Employers are required to keep records that record and explain the amounts deducted, or required to be deducted, from payments to employees. They are also required to record and explain any other acts required by Part IV of the Registration and Collection Act.

The records must be kept in writing in the English language (or in a form that can readily be converted to writing in the English language). The records must enable the matters and acts referred to above to be readily ascertained. CSA will notify a person if they are no longer required to keep records.

There is no requirement to preserve records of a company that has been liquidated and finally dissolved. Apart from these 2 exceptions, failure to keep and preserve records in an offence. The maximum penalty is a fine of $2,000 (section 59).

Incorrectly keeping records

Where an employer keeps their records in such a way that they do not correctly record and explain the matters or acts the employer is guilty of an offence. The maximum penalty is a fine of $2,000.

It is a defence if the employer proves that they did not know and could not reasonably be expected to have known that the relevant record did not correctly record and explain the matter or act (section 60).

Failure to assist an officer authorised to take access to premises and records

CSA's powers to enter premises and access documents are discussed in chapter 6.2 Collecting information.

It is an offence for the occupier, of land or premises entered (or proposed to be entered) by an officer under section 61 to fail to provide all reasonable assistance or facilities that the occupier is capable of providing (section 61(3)). The maximum penalty for this offence is a fine of $1,000.

Providing reasonable facilities includes permitting officers to use the employer's photocopier. However, if the employer does not have a photocopier or it is not reasonable for them to give access to it, then officers cannot demand this service.

Reasonable assistance can involve an employer indicating where records are located or providing a general explanation of how records are structured. An employer is not required to provide active assistance by actually searching for the exact location of the records.

Where records are stored on computer, reasonable assistance would involve assisting officers to log on to the computer and access the relevant records. It would not involve searching through the records to locate the specific file to which officers are seeking access.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.8.2: Offences involving a failure to comply with notices

Context

A person who fails to comply with a CSA notice may be guilty of an offence.

Legislative References

Sections 159B, 160, 161 and 162 *Child Support (Assessment) Act 1989*

Sections 72A, 120 and 121 *Child Support (Registration and Collection) Act 1988*

Explanation

Section 72A Registration and Collection Act

Failure to attend/provide information/produce documents

Order to comply with requirement

Section 72A Registration and Collection Act

CSA can give a notice to a person who owes money to a child support debtor to pay that money to CSA (section 72A(1) Registration and Collection Act). (See chapter 5.2)

A person who refuses, or fails, to comply with a valid notice is guilty of an offence unless they have a reasonable excuse. The offence is punishable by a fine of up to $1,000 (section 72A(2) Registration and Collection Act).

In addition to the fine, a court can order that the person to pay CSA an amount that is not more than the amount, or sum of the amounts (as the case may be), that the person refused, or failed, to pay.

Examples

> Solicitors or land brokers who fail to comply with notices issued against the proceeds of a property sale.
>
> An employer who fails to comply with a notice to deduct from a termination payment.
>
> Contractors who fail to deduct amounts from contract payments made.

CSA views a failure or refusal to comply with a notice under section 72A very seriously.

Failure to attend / provide information / produce documents

CSA can require a person to:

- provide information
- produce documents
- attend and answer questions.

CSA's information gathering powers under the Registration and Collection Act and the Assessment Act are discussed in chapter 6.2 Collecting information.

Section 159B Assessment Act

If a person who has been required to give information to CSA in relation to an estimate of income recklessly fails to give the necessary notification they are guilty of an offence. The requirement to notify CSA arises from a notice under section 160 (See chapter 6.2 Collecting information).

Where a person acts without reasonable care or intentionally disregards the requirement, having regard to

- their abilities, experience, qualifications and other attributes, and
- all the circumstances surrounding the alleged offence,

they will be taken to have acted recklessly.

The maximum penalty is five penalty units.

Section 160 Assessment Act

If a person fails to comply with a notice under section 160 (See chapter 6.2 Collecting information) and they do not have a reasonable excuse (section 160(3B)), they may be guilty of an offence (section 160(3)). A person has a reasonable excuse if compliance would tend to incriminate them (section 160(4)).

A person only needs to comply with a notice to the extent that they are capable (section 160(3A)).

The maximum penalty is 6 month jail sentence.

Section 161 Assessment Act

If a person fails to comply with a notice under section 161 (See chapter 6.2 Collecting information) and they do not have a reasonable excuse (section 161(3B)), they may be guilty of an offence (section 161(3)).

A person only needs to comply with a notice to the extent that they are capable (section 160(3A)).

The maximum penalty is 6 month jail sentence.

Section 161 Assessment Act

If a person fails to comply with a notice under section 161 (See chapter 6.2 Collecting information) and they do not have a reasonable excuse (section 161(3B)), they may be guilty of an offence (section 161(3)).

A person only needs to comply with a notice to the extent that they are capable (section 161(3A)).

The maximum penalty is a 6 month jail sentence.

It is a reasonable excuse for a person not to comply if compliance would tend to incriminate them (section 161(4)).

Example

A payer, M is required to attend a CSA office for an interview to answer questions. M attends the interview but refuses to answer questions concerning assets and income. M specifically refuses to answer questions about income that may have been omitted from an estimate form M gave to CSA previously.

If prosecuted under section 161(3) M may be able to argue successfully that answers to the questions would have been self incriminatory and could provide evidence of offences under section 159 of the Assessment Act of false and misleading statements.

Section 120 Registration and Collection Act

If a person fails to comply with a notice under section 120 (See chapter 6.2 Collecting information) they may be guilty of an offence (section 120(3)).

A person only needs to comply with a notice to the extent that they are capable (section 120(4)).

There is no defence for reasonable excuse in section 120.

The maximum penalty is a fine of $2,000.

Order to comply with requirement

A court can also order a person to comply with a requirement under section 161 or 120 within a specified time. Failure to comply with the order of a court is also an offence.

Maximum penalties are a fine of $5,000 for the Registration and Collection Act and 12 months imprisonment for the Assessment Act (section 121 Registration and Collection Act and section 162 Assessment Act).

Version 1.0

Issued 1 October 2002

< Previous Next >

6.8.3: Offences involving a failure to comply with a requirement of the legislation

Context

The Registration and Collection Act requires parents to notify CSA about certain events. A parent who fails to notify may commit an offence.

Legislative References

Sections 23, 33, 34 and 111 *Child Support (Registration and Collection) Act 1988*

Explanation

The Registration and Collection Act imposes obligations on parents to notify CSA of the creation or variation of a maintenance liability by a court (See chapter 3.4). Failure to comply is an offence (sections 23(7), 33(2 and 34(2)).

The maximum penalty is $1,000.

It is a defence to a prosecution under these provisions if the person gave CSA the information as soon as it was reasonably practicable.

The Registration and Collection Act imposes an obligation on a payer to notify CSA within 14 days of commencing employment or changing their name or address. Failure to notify CSA is an offence (section 111(3)).

The Registration and Collection Act imposes an obligation on payees to notify CSA within 14 days of changing their name or address. Failure to notify CSA is an offence (section 111(3)).

The maximum penalty is $1,000.

It is a defence to a prosecution under this provision if the person gave CSA the information as soon as it was reasonably practicable.

Version 1.1

Issued 1 January 2008

< Previous Next >

6.8.4: False and misleading statements

Context

Both child support Acts create offences if a person provides false or misleading information. The offences and the penalties that can be imposed are different under each Act. Because both of the child support Acts can apply to a case the circumstances in which the statement was made are important in determining which offence has been committed.

Legislative References

Section 119 *Child Support (Registration and Collection) Act 1988*

Section 159 and 159A *Child Support (Assessment) Act 1989*

Explanation

Registration and Collection Act

If a person makes a statement to a CSA officer that is false or misleading in a material particular, they commit an offence (section 119(1)). If a person omits any matter or thing from a statement that makes the statement misleading in a material particular, they commit an offence (section 119(1)).

The person has a defence if they can prove that they either did not know or could not reasonably have been expected to have known that the statement was false or misleading (section 119(2)).

The officer to whom the statement was made must be exercising powers under the Registration and Collection Act (section 119(3)).

The maximum penalty is a fine of $2,000.

Assessment Act

If a person makes a statement to a CSA officer that the person knows is false or misleading in a material particular, they commit an offence (section 159 (1)). If a person omits any matter or thing from a statement that makes the statement misleading in a material particular, they commit an offence (section 159 (1)).

The person will be taken to have known that the statement was false or misleading if having regard to their abilities, experience, qualifications and other attributes, and all the circumstances surrounding the alleged offence, they ought to have reasonably known that the statement was false or misleading (section 159(2)).

The officer to whom the statement was made must be exercising powers under the Assessment Act (section 159(3)).

The maximum penalty for this offence is a 6-month jail term.

If a person recklessly makes a statement to a CSA officer that is false or misleading in a material particular, they commit an offence (section 159A (1)). If a person recklessly omits any matter or thing from a statement that makes the statement misleading in a material particular, they commit an offence (section 159A (1)).

A person is 'reckless' if having regard to the circumstances and their abilities, experience, qualifications and other attributes, they have acted without taking reasonable care about the accuracy and completeness of the statement (section 159A (2)).

The officer to whom the statement was made must be exercising powers under the Assessment Act (section 159A(3)).

The maximum penalty for this offence is 5 penalty units.

Material particular

A 'material particular' must be significant or relevant to CSA. CSA will consider the effect of the statement and the possible advantage gained by the parent.

Version 1.0

Issued 1 October 2002

< Previous Next >

6.8.5: Offences in relation to Departure Prohibition Orders

Context

CSA can make an order to prevent a person from leaving Australia (a departure prohibition order). An offence is committed if the requirements of an order are breached.

Legislative References

Sections 72F, 72U, 72V and 72W *Child Support (Registration and Collection) Act 1988*

Explanation

CSA's powers to make a departure prohibition order are discussed in chapter 5.2 Administrative enforcement.

Where a person leaves Australia for a foreign country knowing, or reckless as to whether:

- a departure prohibition order is in force, or
- their departure is authorised by a departure authorisation certificate,

they commit an offence (section 72F).

The maximum penalty for an offence is 60 penalty units and/or imprisonment for 12 months.

If an authorised officer believes that a person is about to depart from Australia when a DPO is in force and without a departure authorisation certificate, they can require the person to answer questions or produce documents (section 72U(2)(b)). If a person fails to answer a question or produce a document and they are capable of doing so, they commit an offence (section 72U(3)). This offence has a maximum penalty of 30 penalty units.

A person who provides false or misleading answers to questions can be prosecuted (section 72U(5)). This offence has a maximum penalty of 30 penalty units and or 6 months imprisonment.

A person is required to answer questions asked under section 72U(2)(b) even if the answers may incriminate them or expose them to a penalty (section 72V(1)). The answers to the questions are not admissible in evidence against them except in relation to a prosecution under section 72U(5).

A person whose departure is authorised by a departure authorisation certificate must produce the certificate for inspection on the request of an authorised officer (section 72W). Failure to produce the certificate upon request is an offence. There is a maximum penalty of 5 penalty units.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.8.6: Secrecy offences

Context

CSA is subject to the secrecy requirements in the Child Support legislation. The legislation also contains offence provisions for the breach of the secrecy requirements.

Legislative References

Sections 16 and 16AA *Child Support (Registration and Collection) Act 1988*

Sections 150 and 150AA *Child Support (Assessment) Act 1989*

Explanation

The Child Support legislation provides secrecy requirements (section 150 and 150AA of the Assessment Act and section 16 and 16AA of the Registration and Collection Act). For more information on CSA's secrecy obligations go to Chapter 6.3 Privacy, secrecy and proof of identity.

The secrecy requirements apply to:

- the Child Support Registrar,
- the Minister for Human Services,
- the Minister for Families, Community Services and Indigenous Affairs,
- the Secretary of the Department of Human Services,
- the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA),
- the CEO of Centrelink,
- the CEO of Medicare,
- a CSA officer,
- a DHS officer,
- a FaHCSIA officer,
- a Centrelink officer,
- a Medicare officer,
- the Commissioner of Taxation
- a person employed or appointed by, or providing services to, the Commonwealth,
- the Secretary of the Attorney-General's Department or an officer of that department who has received information in relation to overseas maintenance orders or the enforcement of child support overseas,
- any person if the information concerns a credible threat to the life, health or welfare of a person
- a person with a 'sufficient interest'
- a payee of a registered maintenance liability who has notified the Registrar in accordance with section 113A of the Registration and Collection Act of their intention to institute private payee enforcement proceedings.

A person listed above must not (sections 150(2) and 16(2)):

- make a record of any protected information (See Chapter 6.3 for the definition of protected information), or
- communicate any protected information to a person, either directly or indirectly.

The exception is where the person makes the record or communicates the information (sections 150(2A) and 16(2A)):

- under or for the purposes of the Child Support legislation, or
- in the course of performing their duties under, or in relation to, the Child Support legislation.

A further offence, which deals with unauthorised use of information, applies to any person (who is not a person listed above):

- who makes a record of information, communicates, or otherwise makes use of information; and
- that information is information about a person obtained from the records of the Department or CSA, or is information to the effect that there is no information about that person held by CSA or the Department.

See sections 150AA and 150(1) of the Assessment Act and sections 16AA and 16(1) of the Registration and Collection Act.

For example, this offence would apply if personal information was incorrectly sent by CSA to a person (e.g. a letter mailed to the wrong person) and that person records, communicates or otherwise uses that personal information.

The above offence would not apply if a person were to record, communicate or otherwise use personal information that was obtained legally from a source other than the Department or CSA.

People that have legitimately been given personal information (for example, payees who have initiated private payee enforcement proceedings under section 113A of the Registration and Collection Act) may use or record that information for the purpose for which it was given, but would generally be subject to the offence provisions if they were to otherwise use or record it.

The penalty for breaching the secrecy provisions is imprisonment for up to 1 year.

Version 1.1

Issued 3 August 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.8.7: Prosecution of offences

Context

CSA can take action to prosecute people who commit offences under the Child Support legislation.

Legislative References

Sections 4AA, 4B, 15B *Crimes Act 1914*

Explanation

CSA focus for prosecution

Time limits for prosecution

Penalties

Evidence

CSA focus for prosecution

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.

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.

Time limits for prosecution

Prosecution of an offence against a Commonwealth law must be commenced (section 15B Crimes Act)

- In the case of an individual;
  - if the maximum penalty is a jail tem of more than 6 months at any time,
  - in all other cases a summons must be signed within 12 months of the offence being committed.
- In the case of a company;
  - if the maximum penalty is a fine of more than $15,000 at any time,
  - in all other cases a summons must be signed within 12 months of the offence being committed.

Penalties

Some of the penalties imposed for offences are described in terms of 'penalty units'. A penalty unit is equal to $110 (section 4AA Crimes Act).

If the penalty for an offence is a jail term and there is no monetary penalty imposed (e.g. failing to comply with a notice under section 161 of the Assessment Act) a court that has convicted a 'natural' person (i.e. not a company) can impose a fine instead or as well (section 4B Crimes Act).

Unless specified, a court can impose a fine up to 5 times greater than the fine that can be imposed on an

individual.

Evidence

The offences in the Child Support legislation are not indictable offences (i.e. offences with a maximum penalty of a jail term of more than 12 months). CSA offences are tried summarily by a summons to attend a magistrate's court. A magistrate without a jury hears them.

The evidence presented must convince the magistrate. This means that the offence must be broken down into its elements and each element must be proved for the offence to be established.

Potential prosecution cases may be investigated. A brief of evidence can then be referred to the Commonwealth Director of Public Prosecutions who is responsible for deciding whether the Commonwealth should take prosecution action.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.9.1: Complaints about decisions

The complaints process is not a method of reviewing decisions made by CSA. If a parent complains about a decision a CSA officer will advise them of their right to object to that decision (including any right to apply for an extension of time in which to lodge an objection).

If a parent complains in writing about a decision a CSA officer will consider whether the complaint includes a request for a reconsideration of the decision. If so, it is an objection and will be referred for further action to the objections team. The officer will deal with any complaint in the letter about CSA's service.

Parents can also complain about the way a decision was made (for example, they may believe they were not provided with an opportunity to provide information or believe the decision-maker was biased). If they believe the decision is wrong because of a flaw in the decision-making process they can object to that decision. (See chapter 4.1 Objections)

Version 1.0

Issued 1 October 2002

< Previous Next >

6.9.2: Complaints about service

The Child Support Clients' Charter offers a 3-step complaints process to customers who are dissatisfied with CSA's service. A complaint about service is an expression of dissatisfaction with the way that CSA provides services to customers. This can include complaints about the behaviour of CSA officers or contracted Senior Case Officers.

Complaints may be oral or written.

Version 1.0

Issued 1 October 2002

< Previous Next >

6.9.3: The steps in the complaint handling process

CSA policy is to respond promptly to every complaint it receives. CSA has a 3-step complaint process which is set out below. However, complaints about very serious misconduct may be reported directly by the customer service officer, manager or Complaints Officer to the relevant CSA Stream Leader for further action.

CSA keeps a record of all complaints and the action taken to resolve them.

Step one

When a CSA officer receives a complaint from a parent in writing, over the telephone, or in person the officer will make their best efforts to resolve the complaint. They may need to refer it to the relevant team member handling the matter to resolve the complaint. This can involve:

- explaining the operation of the legislation,
- apologising for an error or inappropriate behaviour or action, or
- explaining objection rights to the parent.

CSA officers dealing with a complaint about the delivery of service by a contracted Senior Case Officer will involve that officer in the complaint handling process.

Step two

If the CSA officer cannot resolve the complaint they will refer it to their manager who will deal with the matter promptly and give the issues raised fresh attention. They will also use their best efforts to resolve the complaint and escalate any issues as appropriate. If the manager cannot resolve the complaint they will advise the customer that they can refer the matter to the complaint service by calling 132 919.

Step three

By calling 132 919 a parent can speak to a Complaints Officer who will be responsible for resolving the complaint. An officer who is independent from CSA officers who have handled the parents child support case will look at the complaint.

If the parent is not satisfied with the action taken by CSA they may lodge a complaint at any time with the Ombudsman, their MP or the Minister's Office.

In some cases complaints may go directly to step 2 or 3. These complaints include:

- complaints from very distraught parents who believe they have a serious issue that cannot be resolved by staff in a site office,
- complaints about the behaviour of the customer service officer, their colleagues or manager or a more senior officer.

Version 1.0

Issued 1 October 2002

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.11.1: Compensation

Context

If a customer suffers a loss due to inadequate service or advice CSA will do all that it can to redress the issue and remedy the loss. Compensation may be payable where there is no other remedy available.

CSA will advise customers when its actions or inaction have caused them to suffer a loss and it appears that compensation could be payable. An invitation to apply for compensation does not, in itself, constitute an admission of liability, nor does it guarantee that compensation will be paid.

Legislative References

Privacy Act 1988

Financial Management and Accountability Act 1997, section 33

Financial Management and Accountability Regulations 1977, regulation 9

Department of Finance and Administration Finance Circular 2006/5

Commonwealth policy for handling monetary claims (Attorney General, December 1997)

Explanation

There are a number of reasons why compensation may be payable by a Commonwealth agency such as CSA. CSA may pay compensation if:

- it would be likely to be found to have a legal liability to pay compensation,
- there has been a breach of privacy,
- its administration has been defective, or
- an act of grace payment is appropriate.

If compensation is payable CSA will compensate for loss suffered as a result of its action/inaction.

Further information is available about:

- How to make a claim, and
- Settlement of claims.

Legal liability

If a decision maker believes that a court would be likely to find CSA liable for negligence, CSA will consider trying to settle the matter. CSA may try to avoid unnecessary litigation by offering an appropriate amount as compensation.

The most usual claim for legal liability is a claim of negligence. The concept of negligence is not defined or regulated by legislation. Ultimately a court must decide whether or not a legal liability for negligence exists. The circumstances which give rise to negligence are generally serious. Provided that CSA has acted reasonably and in good faith it will be rare that its actions will constitute negligence.

Three elements are needed to establish a legal liability for negligence:

A legal duty of care,

A breach of the duty of care,

Loss or detriment suffered as a direct result of the breach.

Duty of care

Whether a duty existed will depend on the circumstances of each case. However, a legal duty of care does not equate to any general obligation or responsibility to be careful. A duty to exercise reasonable care arises where it is reasonably foreseeable that a customer may suffer some harm as a result of CSA's advice or actions. A duty does not exist if a person seeks general advice or where the reasons for seeking compensation are sufficiently remote from CSA's actions or involvement.

A legal duty of care can be expressly excluded by statutory provisions.

Example

> Section 91 of the Assessment Act provides that CSA can act on the basis of an application for acceptance of an agreement and accompanying documents without conducting any further investigations.

Legislation may also provide specific remedies in particular circumstances, such as a right of review or appeal.

Example

> Section 107 of the Assessment Act gives a payer the right to seek a declaration from a court that they are not a person from whom child support can be sought.

Where a right of review exists courts have ruled that the exercise of the power on good faith will not give rise to a legal duty of care. In these cases using the right of review is the appropriate remedy provided the customer was made aware that the remedy existed.

Breach of duty

A lapse on CSA's part does not necessarily mean a breach of duty. Negligence is a failure to meet a standard of care that a court considers to be reasonable in the circumstances.

Whether or not a breach occurred is often determined hypothetically by considering what a 'reasonable person' would have done in similar circumstances.

Example

> It is not unreasonable to assume that any competent officer processing a large number of forms may make one error in the processing of one form.

Loss or detriment

The loss suffered must be direct and foreseeable and a result of a breach of a duty of care. There has to be a causal link between the loss suffered and CSA's actions, and the loss must be in the nature of something which CSA should have reasonably known or expected to occur.

The types of loss or detriment which may be compensable are set out below.

Breach of privacy

The *Privacy Act 1988* (the Privacy Act) requires that agencies like CSA observe strict privacy safeguards in handling personal information. These obligations are legally enforceable.

If the Privacy Commissioner upholds a complaint under the Privacy Act he can award a specified amount of compensation. This amount is recoverable from the Commonwealth. It can include reasonable expenses incurred in making the complaint and compensation for injury to personal feelings or humiliation.

Where a decision maker feels that the Privacy Commissioner would be likely to find that CSA is legally liable for a breach of privacy, CSA can try to settle the matter by offering an appropriate amount as compensation.

Defective administration

The Commonwealth has a scheme called 'Compensation for detriment caused by defective administration' (sometimes called the CDDA scheme) that was established in 1995. It provides an alternative method of compensating customers who have been adversely affected by the administration of Commonwealth agencies where no legal liability exists. A legal liability is only likely to arise in the most serious of cases.

The scheme is administrative only, it is not regulated by legislation. The criteria and limitations for paying out compensation under the scheme are set out in the Department of Finance and Administration Finance Circular 2006/5.

Compensation for defective administration may be paid where CSA:

- Unreasonably failed to follow appropriate procedures,
- Unreasonably failed to institute appropriate procedures in the first place,
- Gave incorrect or ambiguous advice, or
- Unreasonably failed to give advice that should have been given.

The scheme:

- Does not apply where there is a legal liability,
- Cannot be used to offset debts owed to the Commonwealth.

The Secretary of the Department of Human Services or an authorised officer can make a decision to pay an amount for defective administration. The decision maker does not have to approve a payment, but the decision to approve or refuse a payment must be publicly defensible.

Act of grace payments

An act of grace payment is a special 'gift' of money from the Commonwealth which may be made where there is no other right of redress available, but there remains some moral obligation on the Commonwealth to satisfy the claimant.

Act of grace payments are extremely rare. One of the principles in establishing the defective administration scheme was to ensure that an act of grace payment was not sought simply as another method of compensation where no legal liability existed. The criteria for act of grace payments are set out in the Department of Finance and Administration Finance Circular 2006/5.

Circumstances where an act of grace payment may be appropriate are:

- The application of the legislation produces unintended, anomalous, inequitable, unjust or otherwise unacceptable results in particular circumstances, or
- The matter is not covered by legislation but it is intended to introduce such legislation and it is considered desirable in the particular case to apply the benefits of the proposed legislation retrospectively by act of grace,
- The particular circumstances of the case lead to the conclusion that there is a moral obligation on the Commonwealth to make a payment.

The Minister for Finance and authorised officials of the Department of Finance (DoFA) have to approve act of grace payments (section 33, *Financial Management and Accountability Act 1997*). CSA can only make proposals in relation to act of grace payments.

Loss

Loss is the damage or detriment suffered by the claimant as a result of the wrongdoing claimed.

Financial or 'pure' economic losses are relatively straightforward and readily quantifiable. They can include:

- Actual costs incurred (legal costs, out of pocket expenses, travel costs, medical expenses),
- Loss of wages for necessary time off work, and
- Loss of opportunity to receive money, or interest incurred on money borrowed.

In relation to loss of opportunity to have child support collected a claimant must demonstrate that they have lost a real opportunity, not merely a speculative one. The likelihood of recovery or amounts already recovered must also be taken into account.

Losses in relation to personal injury can be physical or psychological. Medical evidence will almost always be necessary to establish the extent of the injury and to prove that it occurred as a direct result of CSA's actions.

A claim for non-economic loss cannot stand alone. It must be related (or consequential) to some other form of loss (aggravated damages). Claims for non-financial loss can take many forms, but can include such

things as stress, distress, vexation, anger and embarrassment.

Amounts payable for personal injury and non-financial loss will be considered carefully in accordance with legal precedents, principle and practice.

In assessing the type and extent of any loss CSA may also consider to what extent, if any, the claimant contributed to the loss, or what reasonable steps they took to minimise or contain the loss. Did the claimant tell CSA about the loss as soon as they were able? Where a claimant caused, contributed to or was able to avoid a loss, a portion or all of that loss may be attributed to the claimant.

How to make a claim

If a customer believes that they are entitled to compensation they need to state in writing:

- what happened,
- why they believe CSA's actions caused them to suffer a loss,
- what that loss was, ie, where possible quantify the loss and give evidence such as receipts, invoices or medical reports.

A claim is managed and investigated by a Compensation Officer. The Compensation Officer is a point of liaison with a customer whilst a claim is being considered.

Each claim will be evaluated and decided on its merits by authorised officers. CSA will use Commonwealth policies and guidelines to make the decision. The customer will be given reasons for the decision.

CSA aims to advise customers of the outcome of their claim within 6 weeks of receiving the claim. The Compensation Officer will advise the customer if this timeframe cannot be met.

Settlement of claims

CSA can only spend public monies in the ways specified by the *Financial Management and Accountability Act 1997* and *Regulations*. Regulation 9 requires any expenditure to be in accordance with Commonwealth policy. The policy for payment of legal claims is set out in the *Commonwealth Policy for Handling Monetary Claims*. The principles for deciding and settling claims are set out in Attachment A of the policy *The Commonwealth as a model litigant*.

The factors that must be taken into account are:

- the likelihood of success of the claim in court,
- costs of defending the claim, and
- any other prejudice in defending the claim.

External legal advice must be obtained where CSA intends to pay more $25,000 in settlement of a claim.

Full and final settlement can only be made on the basis of a deed of release indemnifying the Commonwealth against owing any further liability for that particular matter.

In settling claims for defective administration the Commonwealth should not take advantage of its relative position of strength. The decision making process and the decision have to be transparent. Claimants should be advised of adequate details of any offer. They should not be required to waive all of their rights if a partial settlement offer is made and they should be advised that the Ombudsman can review the decision.

Version 1.2

Issued 15 January 2007

< Previous Next >

The Guide home

Part 1: About the scheme

Part 2: Child support assessments

Part 3: Orders under the Family Law Act

Part 4: Objecting, seeking a review, appealing and applying to court

Part 5: Collecting child support

Part 6: Administration

A to Z index

Current guide
Effective from 1 July 2008

6.11.2: Waiver

Context

A CSA customer may owe a debt to the Commonwealth, for example, a child support debt or a debt arising from an overpayment of child support. The Commonwealth is able to waive, or expunge, a debt. If a debt is waived it is completely wiped out and cannot be pursued at a later time should the person's financial circumstances improve.

Legislative References

Financial Management and Accountability Act 1997, section 34

Discretionary Compensation Mechanisms, Department of Finance and Administration Finance Circular 2006/5

Explanation

A debt can only be waived by the Minister of Finance and Administration or by particular authorised officers of that department.

Requests for waiver are considered on a case by case basis. Circumstances where a waiver may be appropriate usually involve a moral obligation, rather than a legal obligation, to extinguish the debt. A moral obligation may be considered to have arisen due to continuing financial hardship and for equity reasons, for instance:

- There are sound reasons for believing that a person's financial circumstances will not improve to the point where they could not repay the debt in full by instalments without suffering genuine and significant financial hardship. A person's assets, future income earning capacity, health and family circumstances are taken into consideration in making a decision, or
- A direct act or omission of a Commonwealth agency, or the impact of a Commonwealth law - whether or not it arose from defective administration - has caused a person to incur an unintended debt to the Commonwealth, the recovery of which would result in an overall loss to the person concerned.

The waiver powers are intended to be used in a limited number of cases to ensure equity in the impact of Government activities.

How to make a claim

A request for waiver of a Commonwealth debt can be made directly to the Department of Finance and Administration or via CSA. Where a request for waiver is received directly by the Department of Finance and Administration it will notify CSA.

A request should provide sufficient information, such as:

- Details of the relevant section(s) of legislation to which the debt relates and the applicant's circumstances in relation to that legislation (CSA can provide the Department of Finance and Administration with this information if necessary);
- Specific details of the Commonwealth's role, if any, that may have directly contributed to the applicant's situation;
- Any history/background to the case, including any available information on the person's assets, income, future earning capacity, other debts, health and family circumstances;
- Any other information that may be relevant to the decision-maker's consideration of the particular circumstances; and

- Written authority for CSA to provide information to the Department of Finance and Administration or, if the application has been made directly to the Department of Finance and Administration, written authority to discuss the application with CSA.

The Department of Finance and Administration will seek additional information from CSA as appropriate. Both the claimant and CSA will be given a copy of the decision on the claim and the reasons for that decision.

Version 1.2

Issued 15 January 2007

< Previous

Instrument 1(b): Financial Delegations for the Child Support Agency

(SECTIONS 4, 5, 6, 7, AND 8)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
1	FMA Act s8	To enter into agreements with any bank for the receipt, custody, payment or transmission of public money or for other matters relating to the conduct of the Commonwealth's banking business.	General Manager DGM Finance		This power must be exercised in accordance with Schedule 4 of this delegation.
2	FMA Act s9	To open and maintain official bank accounts in accordance with agreements under s 8 of the Act.	General Manager DGM Finance		This power must be exercised in accordance with Schedule 5 of this delegation.
3	FMA Act s12	To give a written authorisation for an agreement or arrangement for the receipt or custody of public money by an outsider.	General Manager DGM Finance		This power must be exercised in accordance with Schedule 7 of this delegation.
4	FMA Act s27 (1) (2) (4)	Issue, revoke or amend drawing rights.	General Manager DGM Finance		

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
5	FMA Act s34 (1) (c)	To allow payment by instalments of an amount owing to the Commonwealth.	General Manager DGM Finance Other DGM Other SES 1 (except State Manager) State Manager Dir. National HRM Dir. National Financial Management EL2 and EL1 managing staff responsible for administered debt recovery duties EL1 Personnel Services manager APS6 Assistant Personnel services manager APS 4 to 6 undertaking administered debt recovery duties APS 3 undertaking administered debt recovery duties	Limit of Available Funds Administered $10,000 Departmental $50,000 Departmental $10,000 Administered $400,000 Departmental $10,000 Administered $250,000 Departmental $10,000 Departmental $10,000 Departmental $10,000 Administered $100,000 Departmental $2,000 for staff and former staff debt Departmental $2,000 for staff and former staff debt Administered $50,000 Administered $25,000	This power must be exercised in accordance with Schedule 9 of this delegation.

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
6	FMA Act s34 (1) (d)	To defer the time for payment of an amount owing to the Commonwealth.	General Manager DGM Finance Other SES 1 Dir. National HRM Dir. National Financial Management EL2 and EL1 managing staff EL1 Personnel Services Manager APS6 Assistant Personnel services manager	Limit of Available Funds Departmental $50,000 Departmental $25,000 Departmental $10,000 Departmental $10,000 Departmental $2,000 Departmental $2,000 for staff and former staff debt Departmental $2,000 for staff and former staff debt	This power must be exercised in accordance with Schedule 9 of this delegation.
7	FMA Act s35	To authorise the payment to the person who the delegate considers should receive the payment, of an amount which, at the time of a person's death, the Commonwealth owed to the person.	General Manager DGM Service Quality & Corporate Support DGM Finance	$100,000 $50,000 $50,000	
8	FMA Act s38 (2)	On behalf of the Commonwealth, to enter into agreements in accordance with regulations under the Act, for borrowing money from banks or other persons, where the agreements require the money to be repaid within 60 days after the Commonwealth is notified by the lender of the amount borrowed (see regulation 21 of the Regulations which relates to credit cards and credit vouchers).	General Manager DGM Finance	To enter into agreements for the issue to, and use by, officials of credit cards or credit vouchers.	
9	FMA Act s43	To give written approval of a gift of public property being made.	General Manager	To approve gifts of public property, other than military firearms, of a value of $20,000 or less.	This power must be exercised in accordance with Schedule 11 of this delegation.

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)

10	FMA Act s44 (FMA Reg 9)	Approve general expenditure (not including capital expenditure, settlement of legal claims, hospitality, travel or gifting of public property - these are listed separately).	General Manager	Limit of Available Funds	
			DGM Finance	$3,000,000	
			Other DGM	$1,000,000	
			Other SES 1 (except State Manager)	$500,000	
			State Manager	$200,000	
			Dir. National Financial Management	$200,000	
			Dir. Property & Accommodation Services	$200,000	
			Dir. Procurement & Contract Management	$200,000	
			EL2	$50,000	
			EL1	$10,000	
			Service Delivery Manager	$50,000	
			Site Coordinator	$10,000	
			Credit card holder	$2,000	Limited to $2,000 per transaction, up to $10,000 per month. Delegation for credit card holders is limited to purchase made on the card unless the delegate is otherwise mentioned under this section of FMAA s44
			Cab Charge Card holder	$150	Delegation for Cab Charge card holders is limited to purchase made on the card unless the delegate is otherwise mentioned under this section of FMAA s44

11	FMA Act s44 (FMA Reg 9)	Approve capital expenditure.	General Manager DGM Finance DGM Information & Communication Technology Other DGM EL2 State Manager	Level of allocated Budget $3,000,000 $1,000,000 $10,000 $10,000 $10,000	

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
12	FMA Act s44 (FMA Reg 9)	Settlement of legal claims	General Manager DGM Service Quality & Corporate Support	$50,000 $50,000	The DHS General Counsel must be notified prior to external legal advice being sought. Legal Services Directions require that external legal advice be sought for amounts over $25,000
13	FMA Act s44 (FMA Reg 9)	Approve general expenditure relating to official hospitality (alcohol included).	General Manager DGM Service Quality & Corporate Support DGM Finance Other DGM Dir. National Financial Management State Manager	$30,000 $10,000 $10,000 $2,000 $2,000 $1,000	
14	FMA Act s44 (FMA Reg 9)	Approve expenditure related to travel within Australia	General Manager DGM Other SES 1 (except State Manager) State Manager Dir. National Financial Management Dir. National HRM EL2 Service Delivery Manager EL1 Team Leaders who are also budget holders	Limit of Available Funds Limit of Available Funds $80,000 $50,000 $10,000 $10,000 $10,000 $10,000 $5,000 $5,000	

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
15	FMA Act s44 (FMA Reg 13)	Enter into contracts/agreements	General Manager DGM Finance Other DGM Other SES 1 (except State Manager) State Manager Dir. Property & Accommodation Services Dir. Procurement & Contract Management	Level of allocated Budget $3,000,000 $1,000,000 $500,000 $200,000 $200,000 $200,000	
16	FMA Act s44 (FMA Reg 13)	Enter into capped indemnities, warranties, gurantees and letters of comfort	General Manager DGM Finance	$5,000,000 $500,000	

17	FMA Act s44 (FMA Reg 13)	Enter into purchase orders	General Manager	Level of allocated Budget	
			DGM Finance	$3,000,000	
			Other DGM	$1,000,000	
			Other SES 1 (except State Manager)	$500,000	
			State Manager	$200,000	
			Dir. National Financial Management	$200,000	
			Dir. Property & Accommodation Services	$200.000	
			Dir. Procurement & Contract Management	$200,000	
			EL2	$50,000	
			EL1	$10,000	
			Service Delivery Manager	$50,000	
			Site Coordinator	$10,000	
			Credit card holder	$2,000	Limited to $2,000 per transaction, up to $10,000 per month. Delegation for credit card holders is limited to purchase made on the card unless the delegate is otherwise mentioned under this section of FMAA s44
			Cab Charge Card holder	$150	Delegation for Cab Charge card holders is limited to purchase made on the card unless the delegate is otherwise mentioned under this section of FMAA s44

18	FMA Act s44	Approve disposal of public property not subject to the provisions of the Lands Acquisition Act that has become surplus, obsolete or unserviceable.	General Manager DGM Dir. National Financial Management	$100,000 $50,000 $10,000	Disposal of public property by Gifting must be exercised in accordance with Item 9 of this Delegation.

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
19	FMA Act s47 (1) (a) (b) (c)	Approve non-recovery of a debt.	General Manager DGM Service Quality & Corporate Support DGM Finance DGM Service Delivery AGM Service Delivery State Manager EL 2 and EL 1 managing staff responsible for administered debt recovery duties APS 6 undertaking administered debt recovery duties APS 5 undertaking administered debt recovery duties	Unlimited Departmental $20,000 Departmental $20,000 Administered $400,000 Administered $250,000 Administered $100,000 Administered $75,000 Administered $25,000 Administered $10,000	

Instrument 1(b): Financial Delegations for the Child Support Agency (continued)

ITEM	PROVISION OF LEGISLATION	SUMMARY OF FUNCTION OR POWER	DELEGATE(S)	LIMIT OF DELEGATION	DIRECTIONS
(1)	(2)	(3)	(4)	(5)	(6)
20	FMA Reg 10	To authorise approval of a spending proposal for which money is not appropriated where: a) the spending proposal relates to a *departmental item*; and b) the spending proposal relates to a period within the period of the forward estimates; and c) there is uncommitted appropriation and uncommitted forward estimates which are sufficient to cover the expenditure under the spending proposal as it would or could become payable.	General Manager DGM Finance	$5,000,000 $500,000	This power must be exercised in accordance with Schedule 12 of this delegation.
21	FMA Order 2.5.1	To authorise a holder of a Commonwealth credit card to use the card to pay a claim that includes both official and coincidental private expenditure and specify arrangements for the holder of that credit card to reimburse the Commonwealth for that coincidental private expenditure.	General Manager DGM Service Quality & Corporate Support DGM Finance		
22	FMA Order 3.1.1	To approve a banking day, other than the next banking day, on which public money received must be paid into an official account.	General Manager DGM Service Quality & Corporate Support DGM Finance		

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authinstrument.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authschednswact.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authschedqld.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authschedsant.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authschedvic.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authschedtas.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authschedwa.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authobjnswact.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authobjqld.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authobjsant.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authobjvic.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authobjtas.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/part_7/authobjwa.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Embedded Secure Document

The file *http://guide.csa.gov.au/archive_pre_1july2008/__documents/foiauth.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

Australian Government

Department of Human Services

CHILD SUPPORT REGISTRAR'S INSTRUMENT OF DELEGATION 2006

Section 15, *Child Support (Registration and Collection) Act 1988*
Section 149, *Child Support (Assessment) Act 1989*

In pursuance of the powers vested in me by Section 15 of the *Child Support (Registration and Collection) Act 1988* and Section 149 of the *Child Support (Assessment) Act 1989*, I, Matthew Charles Miller, Child Support Registrar, hereby

1. DELEGATE such of my powers and functions as are specified in Schedule 1 and Schedule 2 to this Instrument.

2. AUTHORISE the persons from time to time holding, occupying or performing duties of the positions named in Schedule 3 to exercise, in my name and on my behalf, subject to any limitations in Schedule 3, my powers to review and alter any act done in exercise of the above Delegation at any time within a period of six years from the date of that act being done.

This instrument of delegation replaces the previous instrument of delegation dated 29 September 2006, and that delegation is hereby revoked.

Dated this 18th day of December 2006

MATTHEW CHARLES MILLER
CHILD SUPPORT REGISTRAR
CHILD SUPPORT AGENCY

SCHEDULE 1

DELEGATION NUMBER	POWERS AND FUNCTIONS DELEGATED	OFFICE/TITLE OF DELEGATE
1	All of my powers and functions contained in the ***Child Support (Registration and Collection) Act 1988***, except those under Section 15	(a) Deputy General Manager, Child Support Agency (b) Branch Head, Service Quality and Support Group, Child Support Agency (c) State Manager
2	All of my powers and functions contained in the ***Child Support (Assessment) Act 1989***, except those under section 149	(a) Deputy General Manager, Child Support Agency (b) Branch Head, Service Quality and Support Group, Child Support Agency (c) State Manager

Initial …….. Date……..

SCHEDULE 2

LAW	PROVISION	PURPOSE	OFFICE/TITLE OF DELEGATE	LIMIT OF DELEGATION
Child Support (Registration and Collection) Act 1988	Section 72D	Making of a Departure Prohibition Order	Service Delivery Manager	Administered $100,000
	Section 72I	Variation of Departure Prohibition Order	Service Delivery Manager	Administered $100,000
	Section 72I	Revocation of a Departure Prohibition Order	(a) Service Delivery Manager (b) Team Leader of a specialised Departure Prohibition Order team (APS 6)	(a) Administered $100,000 (b) Administered $50,000
	Section 72L	Issuing a Departure Authorisation Certificate	(a) Service Delivery Manager (b) Team Leader of a specialised Departure Prohibition Order team (APS 6)	(a) Administered $100,000 (b) Administered $50,000
	Section 72M	Substitution of date specified in the Departure Authorisation Certificate Refuse an application by a person to substitute a later date in the Departure Authorisation Certificate	(a) Service Delivery Manager (b) Team Leader of a specialised Departure Prohibition Order team (APS 6)	(a) Administered $100,000 (b) Administered $50,000

SCHEDULE 3

REVIEW AND ALTER

CSA OFFICER	MAY REVIEW DECISIONS OF
Deputy General Manager Service Quality and Support Group Child Support Agency	All delegates
Branch Head Service Quality and Support Group Child Support Agency	State Managers
National Compliance Manager Child Support Agency	State Managers, as they relate to the Compliance portfolio

Initial …….. Date……..

Australian Government

Department of Human Services

CHILD SUPPORT REGISTRAR'S INSTRUMENT OF DELEGATION TO SENIOR CASE OFFICERS 2007/1

Section 15, *Child Support (Registration and Collection) Act 1988*
Section 149, *Child Support (Assessment) Act 1989*

In pursuance of the powers vested in me by Section 15 of the *Child Support (Registration and Collection) Act 1988* and Section 149 of the *Child Support (Assessment) Act 1989*, I, Matthew Charles Miller, Child Support Registrar, hereby

1. DELEGATE my powers and functions as specified in Column 1 of Schedule 1 to this Delegation to the persons named in Column 2 of that Schedule.

   1.1. The delegation in paragraph 1 is for the period(s) during which the persons named are performing services pursuant to a Deed of Standing Offer.

2. DELEGATE my powers and functions as specified in Column 1 of Schedule 1 to any Departmental employees occupying or performing duties of the positions named in Column 2 of Schedule 1.

3. AUTHORISE the persons from time to time holding, occupying or performing duties of the positions named in Schedule 2 to exercise, in my name and on my behalf, my powers to review and alter any act done under the above Delegations at any time within a period of six years from the date of that act being done.

This instrument of delegation has effect from 1 January 2007 from which date it replaces and revokes the instrument dated 29 September 2006.

Dated this 18th day of December 2006

MATTHEW CHARLES MILLER
CHILD SUPPORT REGISTRAR
CHILD SUPPORT AGENCY

SCHEDULE 1

POWERS AND FUNCTIONS DELEGATED (1)	PERSONS/REGION (2)	
(a) all of my powers and functions contained in Part 6A and Section 161 of the *Child Support (Assessment) Act 1989* (b) my powers and functions contained in Part VII of the *Child Support (Registration and Collection)* to consider internal objections to decisions made under Part 6A of the *Child Support (Assessment) Act 1989*.	Lindsay Wootten	NSW/ACT
	Linda Blackman	NSW/ACT
	Marshal Douglas	NSW/ACT
	Alan Tobin	NSW/ACT
	Barry Wyborn	NSW/ACT
	Harry Crisp	NSW/ACT
	Atousa Khadem	NSW/ACT
	Peter Skidmore	NSW/ACT
	Susan Raice	NSW/ACT
	Karin Ursino	NSW/ACT
	Marina Bournazos	NSW/ACT
	Jennifer Grant	NSW/ACT
	Ammata Viravong	NSW/ACT
	Melissa Sands	QLD
	Judith Williams	QLD
	Virginia Ryan	QLD
	Jennifer Fanning	QLD
	William Cooper	QLD
	Russell Stubbs	QLD
	Gregory Watt	QLD
	Lisa O'Neill	QLD
	Bruce Doyle	QLD
	Penelope Feil	QLD
	Michelle Buck	QLD
	Lucia Taylor	QLD
	Natalie Siegel	QLD
	Kerrie Dixon	QLD
	Pam Goodman	QLD
	Melissa Fritz	QLD
	Rosemary Lavers	SA/NT
	Franca Petrone	SA/NT
	Jennifer Parham	SA/NT
	Andrew Swifte	SA/NT
	Kate Warren	SA/NT
	John Short	SA/NT
	Greg Le Poidevin	SA/NT
	Diane Myers	SA/NT
	Matthew Howie	SA/NT

POWERS AND FUNCTIONS DELEGATED (1)	PERSONS/REGION (2)	
(a) all of my powers and functions contained in Part 6A and Section 161 of the *Child Support (Assessment) Act 1989* (b) my powers and functions contained in Part VII of the *Child Support (Registration and Collection)* to consider internal objections to decisions made under Part 6A of the *Child Support (Assessment) Act 1989*	Sue Gillett	WA
	Michael Millsteed	WA
	Lisa Young	WA
	Haydn Rigby	WA
	Tracy Summerfield	WA
	Christina Chandler	WA
	Pina Federico	VIC/TAS
	Di Hubble	VIC/TAS
	Jane Koelmeyer	VIC/TAS
	Alan Johnson-Dunn	VIC/TAS
	Henry Randell	VIC/TAS
	Kim Magnussen	VIC/TAS
	Andrew Carson	VIC/TAS
	Ruth Siegel	VIC/TAS
	Annette Raber	VIC/TAS
	Virginia Hine	VIC/TAS
	Elizabeth Bugg	VIC/TAS
	Trevor Lane	VIC/TAS
	Judith Paterson	VIC/TAS
	Ian Petty	VIC/TAS
	Jill Raby	VIC/TAS
	Melissa Honner	VIC/TAS
	Barbara Carthew- Wakefield	VIC/TAS
	Hugh Whittle	VIC/TAS
	Louise Mathias	VIC/TAS
	Internal Senior Case Officer Executive Level 1	

SCHEDULE 2

REVIEW AND ALTER

Deputy General Manager
Service Quality and Support Group
Child Support Agency

Branch Head
Service Quality and Support Group
Child Support Agency

National Compliance Manager
Child Support Agency

State Manager
Child Support Agency