

Child Support Assessments, Agreements & Parentage



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Alira Morey, Senior Solicitor, Women's Legal Services NSW on 1 April 2014. This webinar can be downloaded for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- Calculating the child support formula
- Appealing assessments
- Binding and Limited Child Support Agreements
- Proving parentage

Relevant law

- *Child Support (Registration & Collection) Act 1988*
- *Child Support (Assessment) Act 1989*
- *Family Law Act 1975*

What is child support?

- The main object of the child support legislation is to ensure that children receive a proper level of financial support from their parents
- CSA has jurisdiction to administer the child support legislation – including, but not limited to:
 - Calculating child support payable
 - Making changes to an administrative assessment (in limited circumstances)
 - Enforcing payments

Calculating child support assessment

1. Work out child support income (dependent children & multiple CSA assessments taken into account)
2. Work out combined child support income
3. Work out income percentage
4. Work out care percentage
5. Work out cost percentage
6. Work out child support percentage
7. Work out cost of your child
8. Work out child support amount payable

"Income" for child support

INCOME includes:

- Taxable income
- Reportable fringe benefits
 - Eg, personal use of company car
- Foreign income
- Net investment losses
- Some tax-free pensions
 - Eg, disability and carers pensions
- Reportable super contributions

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- Eg, salary sacrificed super contributions

Care & cost percentage table

% of CARE	Type of Care & No. of nights/annum	Approx. no. of nights/fortnight	COST %
0 to <14%	Below Regular (0-51 nights)	1 night	NIL
14% to <35%	Regular Care (52-127 nights)	2 nights/fn (52nts/yr) 4 nights/fn (104nts/yr)	24%
35% to <48%	SHARED CARE		25% + 2% for each care % point over 35%
	SHARED CARE	5 nights/fn (130nts/yr)	
	SHARED CARE	6 nights/fn (156nts/yr)	
	SHARED CARE	7 nights/fn (182nts/yr) 8 nights/fn (208nts/yr)	
48% to 52%	SHARED CARE	9 nights/fn (234nts/yr)	50%
>52% to 65%	SHARED CARE (35% to 65%; 128 – 237 nights/annum)		51% + 2% for each care % point over 53%
>65% to 86%	Primary Care (238-313 nights)	10 nights/fn (260nts/yr) 12 nights/fn (312nts/yr)	76%
>86% to 100%	Above Primary Care (314 – 365 nights)	13 nights/fn (338nts/yr) 14 nights/fn (364nts/yr)	100%

Minimum & fixed assessments

- Paying parents in receipt of Centrelink with less than ‘regular care’ of child & income less than self-supported amount (currently ~ \$22,000/annum) still have to pay minimum child support
 - Current figure ~\$7.50 per week per child support case
- Paying parents who report low taxable incomes but NOT in receipt of Centrelink may have to pay a certain amount of child support
 - Current figure – capped between \$70-\$100 per week for 3+ children

Change of assessment (CoA)

1. The costs of maintaining a child are significantly affected by high costs of enabling a parent to spend time with, or communicate with, the child
2. The costs of maintaining a child are significantly affected by high costs associated with the child’s special needs
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
4. The child support assessment is unfair because of the child’s income, earning capacity, property or financial resources
5. The child support assessment is unfair because the paying parent has paid or transferred money, goods or property to the child, the receiving parent, or a third party for the benefit of the child
6. The costs of maintaining a child are significantly affected by the parent or non-parent carer’s high childcare costs for the child (and the child is under 12 years).
7. The parent’s necessary expenses significantly affect their capacity to support the child.
8. The child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents.
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/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.



10. The parent's responsibility to maintain a resident child significantly reduces their capacity to support the child support child

Would a change to the assessment be 'just & equitable'?

Before making a decision to change an assessment of child support, CSA needs to consider:

- Duty of a parent to maintain a child
- Proper needs of the child
- Income/earning capacity, property/financial resources of the child and each parent
- Whether either/both parent has any other child they have a duty to maintain
- Direct/Indirect costs incurred by the Carer Parent in providing care for the child
- Any hardship to child or parents if the change sought is made/or is not made

Change of Assessment decision

1. CSA drafts a written decision that is sent to both parents
2. If either parent wishes to appeal the decision, the next avenue for appeal is with the Social Security Appeals Tribunal (SSAT)

SSAT appeal

- Must be lodged within 28 days of the parent receiving the Notice of Objection decision from the CSA
- SSAT's function is to:
 - Identify the issues which are relevant and
 - Determine what evidence is required
- The SSAT may:
 - Question the parties to elicit information
 - Require the attendance of witnesses
 - Question any witnesses to elicit information
 - Require the production of documents by the parties or other persons
- Child support appeals can be lodged over the telephone, in writing (using an appeal form) or in person at any SSAT office
- Child support appeals can also be lodged in writing at the CSA, Centrelink, Department of Human Services or FaHCSIA
- Appealing to the SSAT is FREE!!!!
- There is also no provision for costs orders for unsuccessful parties – so go ahead and appeal!

Appeal to Court from SSAT

- Parents who are not satisfied with an SSAT decision regarding their child support appeal can appeal to Court but ONLY on a QUESTION OF LAW
- A Notice of Appeal (Child Support) must be lodged with the Federal Circuit Court within 28 days of the SSAT decision.
- There are time limits for instituting appeals

Binding child support agreements

- Statement of Independent Legal Advice
 - Effect of agreement on rights of party &



- Advantages/disadvantages at time of signing
- No requirement for a CSA admin assessment
- Can stipulate more OR less child support be paid than under an admin assessment
- Longer lasting
 - Agreement can be until child reaches age of 18 years
- Very difficult to get set aside unless the parents agree

Limited child support agreements

- Agreement must be in writing, signed, dated by parents
- Don't need independent legal advice to sign agreement
- CSA admin assessment MUST be in place
- Child support payable must AT LEAST be the minimum of the admin assessment
- If circumstances change & the agreement no longer workable, after 3 years either parent can apply in writing to the Registrar to unilaterally terminate the agreement

Beware of reaching agreements in mediation relating to financial arrangements/child support

Ways to end a Limited Child Support Agreement:

1. Both parents agree to end the agreement;
2. More than 3 years has passed with the existing agreement in place, & written notice is provided by the parent who wants to end it;
3. There is a Court Order that sets aside the agreement;
4. A new assessment is different by more than 15% from the previous assessment, in circumstances not included in the agreement, & one of the parents wants to end it;
 - Eg, if one parent receives a large pay rise increasing their taxable income which would increase the amount of child support payable under an administrative assessment by more than 15%
5. Or, a new agreement replaces the existing agreement

Presumption of Parentage

- Before CSA will accept a child support application they must be satisfied both parents are "parents" of the child or children involved.
- The CSA will be satisfied where:
 - The parents were married when the child was born
 - The parent is named on the child's birth certificate as the parent
 - Where the parent is a man, they were living with the mother between 20 and 44 weeks prior to the birth of the child
 - The person has adopted the child
 - A statutory declaration has been made by a person acknowledging they are the parent of the child
 - The parent is a 'parent of the child' under s.60H & s.60HB Family Law Act (artificial conception & surrogacy arrangements)

Section 106A applications

- Centrelink requires 'reasonable maintenance action'
- Without 'proof of parentage' CSA will reject application for child support
- Try to ask Father to sign Stat Dec acknowledging he's the Father

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- Try to negotiate DNA testing
- If negotiations fail, Mother to ask Court for a declaration that Father IS the Father for child support (s.106A *Child Support (Assessment) Act*)
- File Application at Federal Circuit Court within 56 days or Local Court within 60 days of CSA refusal

Section 107 applications

- Centrelink requires 'reasonable maintenance action'
- Without 'proof of parentage' CSA will reject application for child support
- Try to ask Father to sign Stat Dec acknowledging he's the Father
- Try to negotiate DNA testing
- If negotiations fail, Mother to ask Court for a declaration that Father IS the Father for child support (s.106A *Child Support (Assessment) Act*)
- File Application at Federal Circuit Court within 56 days or Local Court within 60 days of CSA refusal
- Where Father disputes parentage, can seek a declaration under s.107 that Mother not entitled to child support assessment because he's not the Father
- Same time limits as s.106A Applications
- Extension of time to lodge s.107 Application usually granted
 - Father should explain delay to the Court
- If Court declares Father is NOT the Father of the child, Court must consider whether Mother must repay Father any child support monies he has already paid to her

Contact Child Support Agency

- 131 272 - Applying for child support & general enquiries incl changes in circumstances
- 131 107 – Automated information service
- 131 450 - Multilingual interpreting
- www.humanservices.gov.au/customer/dhs/child-support
 - Access to online application forms
 - Payment calculator