

Child Support Enforcement, Centrelink & Complaints



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Alira Morey, Senior Solicitor, Women's Legal Services NSW on 15 April 2014. This webinar can be downloaded for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- Enforcement of child support
- What if a parent goes overseas?
- The effect of child support on Centrelink & FTB
- When is domestic violence relevant to child support?
- Complaints against the Child Support Agency

Collection of arrears / enforcement

Registered maintenance liability:

- Best to 'register' the child support case with the Child Support Agency (CSA) so they can collect child support payable and disburse to the payee/carer parent
- If the payer does not pay child support, then the CSA can enforce the collection of arrears
 - Eg, garnish wages, intercept tax refunds, commence Court proceedings and seek Orders for the sale of assets owned by the payer to pay off child support arrears
- Payees can also chase unpaid child support via Court proceedings for enforcement even if the case was 'registered' for the CSA to collect child support

Unregistered maintenance liability:

- Up to the payee carer parent themselves to commence enforcement proceedings in cases where the child support case was NOT registered for CSA to collect (ie, the case is a 'private collect' case)

Sometimes CSA will choose not to commence enforcement proceedings and therefore it's up to the individual carer to pursue enforcement of child support payable (if they choose to), including but not limited to situations where there are already Court proceedings for child support on foot

International issues & Child Support

Reciprocating jurisdictions: where 1 parent lives in a reciprocating jurisdiction, CSA tries to set up child support payments according to local laws, procedures or policies in those countries

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- Wherever possible, a child support liability should be made and administered in the country the payee lives in
- The country the payer lives in is responsible for collecting child support

‘Resident of Australia’ determination: CSA must make a determination about whether a parent is a ‘resident of Australia’ to determine (for example):

- If an application for child support is made properly and able to be accepted
- If the right income rules are used to work out an administrative assessment
- Whether an overseas maintenance liability can be registered

You’re a ‘resident of Australia’ for child support laws if you are deemed a ‘resident’ under the ATO laws (some exception, eg Norfolk Island, Cocos Islands, Christmas Island residents)

Australian residents leaving Australia: CSA will determine if someone continues to be a ‘resident of Australia’ having regard to:

- Ordinary meaning of ‘resident’; OR
- Statutory domicile & permanent place of abode test; OR
- Statutory superannuation test

Non-residents entering Australia: CSA will determine if someone has become a resident of Australia by having regard to:

- Ordinary meaning of ‘resident’; OR
- Statutory 183 day test

Australia New Zealand Agreement

- The country where the payee is ‘habitually resident’ will have jurisdiction to issue and administer a child support assessment and the country that the payer lives in has the jurisdiction to collect child support from the payer
- Australia has entered agreements with other countries (eg, with the USA). Refer clients to Child Support International section or a lawyer for advice

Departure Prohibition Order (DPO)

- CSA can issue a DPO - an administrative order (not a court order) preventing a parent from leaving Australia until child support arrears have been paid or an appropriate payment arrangement put in place
- If a payer wants to challenge a DPO, there are administrative and court avenues for appeal

Effect of Child Support Agreements on Centrelink FTB

- Family Tax Benefit (FTB) is calculated based on a CSA ‘notional assessment’ – regardless of the amount of child support actually being paid/received
- Therefore, parents who agree to receive LESS child support (via a Binding Child Support Agreement) than the notional assessment would have provided them, will still receive FTB based on what the notional assessment sets their child support at
- Centrelink and the CSA now share a database in relation to information regarding the living arrangements for the children. Parents can notify either Agency of any change to the living arrangements of the children so both FTB/Centrelink payments and child support can be adjusted according to the actual living arrangements of the children

Centrelink exemption: domestic violence

- If a parent is in receipt of Centrelink FTB, they are obliged to take ‘reasonable maintenance action’ to recover child support for the child



- If the Mother was a victim of violence by the liable Father, Social Workers at Centrelink may grant her with an 'exemption' from having to seek 'reasonable maintenance action' against the Father – resulting in full FTB being paid without having to chase the Father for child support. This will usually be reviewed in future to see if circumstances have changed
- Refer clients to Centrelink for these matters

Commonwealth Ombudsman – complaints investigation

- The Ombudsman can investigate complaints about the actions and decisions of Australian Government agencies actions and decisions to see if they are wrong, unjust, unlawful, discriminatory or just plain unfair
- The Ombudsman also seeks remedies for those affected by administrative deficiencies, and acts to improve public administration

Compensation

CSA may pay compensation to a customer in the following circumstances:

- It would be likely to be found to have a legal liability to pay compensation
 - Eg, failure of duty of care, breach of duty, negligence, and that there was a 'direct foreseeable' loss or detriment resulting from the breach of duty of care
- Breach of privacy
 - Eg, sending a customer's letter to the wrong person – name, address, income information, children's names sent to a stranger!
- An act of grace payment would be appropriate
 - Eg, special 'gift' of money from the Commonwealth which could be made if there was no other right of redress available but there is a real moral obligation on the part of the Commonwealth to do 'something' for the person claiming compensation
- Defective administration (Compensation for Detriment caused by Defective Administration: CDDA scheme) - ie, where the CSA:
 1. Unreasonably failed to follow appropriate procedures
 2. Unreasonably failed to institute appropriate procedures in the 1st place
 3. Gave incorrect/ambiguous advice
 4. Unreasonably failed to give advice that should have been given.
 - CDDA doesn't apply where there's a legal liability
 - CDDA can't be used to offset debts owed to the Commonwealth
 - Forms are available on CSA website
 - Complaints are handled by a CSA Compensation Officer
 - If your client is not happy with result – lodge complaint with Commonwealth Ombudsman

Referrals

Child Support Agency

- 131 272 or www.humanservices.gov.au/customer/dhs/child-support

Women's Legal Services NSW advice line

- (02) 8745 6988 or 1800 801 501

NSW Legal Aid Child Support Service

- (02) 9633 9916 or 1800 451 784

South West Sydney Legal Centre

- (02) 9601 7777

Law Society Solicitor Referral Service

- Provide referrals to family lawyers in your client's area on (02) 9926 0300 or 1800 422 713