

# Child Support through the Child Support Agency (CSA)

*This information is based on the law as at July 2010. It is written for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.*

This tip sheet is for women who can *get* child support. If you have to *pay* child support, you need to get advice about your particular situation, see *Where do I go for information and advice?*

## **What is the CSA?**

The CSA is a government agency (within the Department of Human Services) which is responsible for administering the law about child support. It has close working relationships with the Australian Taxation Office and Centrelink.

## **What is child support?**

Child Support is money paid to you by your ex-partner to help pay for costs associated with raising your child or children.

## **Who can get child support?**

Usually the person who cares for the child most of the time applies to the CSA for child support. Most often this will be a parent, but sometimes it may be a grandparent or another family member.

Same-sex couples can register for child support. You can get child support from a step parent, if no one else can financially support the child.

If you and the other parent both care equally for your child, but the other parent's income is higher than yours, then you can still apply for child support from them.

## **Who pays me child support if I am not the child's parent?**

You can receive child support from both parents of a child if you are caring for the child 35 percent of the time or more (at least 128 nights a year) and apply for a child support assessment. Your income is not taken into account.

## **How do I get child support?**

You can ask the CSA for an assessment (either over the phone or by sending in an *application for child support assessment*) or you can make a private agreement with your ex-partner.

## **CSA assessment**

If the CSA makes an assessment, you can then either:

- a) make your own payment arrangements with your ex-partner; or
- b) ask the CSA to collect the payments for you

If the CSA collects the payments for you, they will be either:

- a) taken from your ex-partner's wages or pension; or
- b) paid directly by your ex-partner to the CSA.

## **Private agreement**

If you and your ex-partner come up with your own agreement, you can ask the CSA to accept the agreement and collect the payments, should you wish. There are two types of agreement, being:

1. A Limited Agreement – this is where a child support formula assessment has already been made and the amount payable is at least equal to that assessment. Neither you nor your ex-partner need to get legal advice before entering into a limited agreement; and
2. A Binding Agreement – this is where there is no need for a child support formula assessment and where the agreement can be for any amount. Both you and your ex-partner need to get legal advice before entering into and ending a binding agreement. The agreement can only be ended by a Court order or a new binding agreement.

If you decide to collect your child support privately, remember that the CSA and Centrelink will assume that you are receiving the full agreed amount, even if you are not.

Many women prefer to use the CSA to both assess and collect their child support payments, rather than having to deal with their ex-partner personally.

## **What if my ex-partner is on income support or a low income?**

Even if your ex-partner's only income is from a pension then he/she must still pay \$6.82 a week in child support. This amount will increase accordingly with inflation. If they are on a pension (newstart, mature age, sickness allowance and youth allowance) and your child spends at least one night a week (14% of care) with him/her, then he/she will not have to pay child support.

The minimum child support assessment will generally be payable for each child support family, up to a maximum of three families.

If your ex-partner has less than shared care, is on a low income (less than the Parenting Payment single maximum basic amount) and is not receiving income support, child support will be payable at a *fixed annual rate* which is indexed to the cost of living and changes each year.

## **Do I have to ask for child support?**

You may not want the CSA to seek payment from your ex-partner because of domestic violence issues. If you get a payment from Centrelink, then you have to register with the CSA. However, in exceptional circumstances, the CSA will not insist upon payments being made. This usually requires a recommendation from a Centrelink social worker. Centrelink social workers can also grant an exemption when the Father is not known.

If you receive more than the base rate of Family Tax Benefit Part A, you must apply for a child support assessment or your benefit may be reduced.

## **What if the Father denies that he is the Father?**

If the Father's name is not on your child's birth certificate, the CSA requires him to sign a statutory declaration that he is the Father before they will regard him as a parent. If he refuses to sign, you have to apply to the Federal Magistrates Court for a declaration of paternity. You may be able to get Legal Aid for this. The Court may require you, the Father and your child to have DNA testing. This is usually done by taking mouth swabs from each of you. The tests are quite expensive (between \$600 and \$800). Usually you would be each expected to pay for half of the cost, with the Father to reimburse you for your share if paternity is proven.

If there is any doubt about the paternity of your child, you should seek legal advice before claiming child support. If it later emerges that the person paying you child support is not the Father, you may have to repay all the child support that you have received from him.

### **When can I start getting child support?**

You can apply for child support at any time after separation from the Father, or from your baby's birth (if you have already separated). Child support is only payable from the date of your assessment, which is usually the day you contact the CSA.

### **How is child support assessed?**

The CSA works out how much child support is to be paid by applying a formula. This formula takes into account:

- the ages of the children and the costs of raising them
- your income and the income of your ex-partner (which are considered equally)
- how many children you have with your ex-partner
- how much time the child spends with each of you (usually the number of nights)
- your living expenses and those of your ex-partner (the same *self-support* amount is deducted from each of your incomes before child support is worked out)
- whether the payer has a subsequent family or families to support

If you want daytime care to be taken into consideration, you should provide the CSA with a written agreement that sets this out.

To estimate how much child support you will get, go to the Child Support Agency website at [www.csa.gov.au](http://www.csa.gov.au).

### **What is a non-agency payment?**

Most child support payments are periodic cash payments to you. It is also possible to get child support paid as a non-agency payment (for example, the payment of your child's school fees or a payment towards your mortgage). These types of payments can be up to 30% of your ex-partner's child support liability. Your agreement is not required for your ex-partner to pay up to this amount in non-agency payments, but if it amounts to more than 30%, you do have to agree.

### **What if I do not agree with a CSA assessment or decision?**

You must lodge an objection with the CSA within 28 days of receiving their decision. You may get more time if you have a good reason for the delay. You do not have to fill in a special form, but your objection must be in writing and must contain full details about what it is you are objecting to and why. You should also have detailed information in support of your objection.

The CSA will then contact your ex-partner and give him/her an opportunity to respond to your objection. The original decision remains in force until your situation has been reviewed. The CSA must respond to your objection within 60 days.

If your circumstances fall into one, or more, of ten defined *special circumstances*, you can also apply to change your assessment. These special circumstances could include things like:

- it costs you extra to cover your child's special needs
- it costs you extra to care for, educate or train your child in the way that you and the Father intended
- the child support assessment does not take into account the income, earning capacity, property or financial resources of you or your ex-partner

You can get the application form for changing your assessment in special circumstances from the CSA website.

### **What if I still disagree after the CSA considers my objection?**

If you still disagree with an assessment or decision after your objection has been reviewed by the CSA, then you may be able to go to the Social Security Appeals Tribunal (if the decision was made after 1 January 2007), the Administrative Appeals Tribunal or the Federal Magistrates Court. You should get legal advice about where it is appropriate for you to go. Most appeals are now handled by the Social Security Appeals Tribunal.

You must apply to the Social Security Appeals Tribunal within 28 days of receiving the CSA response to your objection, although it is sometimes possible to get an extension.

The aim of the SSAT is to provide an informal and inexpensive review process of CSA decisions.

For a self-help guide on *Appealing to the Social Security Appeals Tribunal* go to <http://www.welfarerights.org.au> In some limited cases it is possible to appeal the SSAT decision in the Court.

If you are already going to be in the Family Court or the Federal Magistrates Court for some other reason, such as a property settlement, it is sometimes possible to have your application to change your child support assessment dealt with at the same time. The Court has to be satisfied that it is in the interests of both you and your ex-partner to do this.

The Court now has powers which should make it easier for you to appeal your assessment, for example:

- the same powers available to it as the CSA itself when it comes to getting information about your ex-partner
- more powers to make temporary arrangements for child support whilst dealing with your case

You can make complaints about the CSA to the Commonwealth Ombudsman or your Federal Member of Parliament.

### **What about the Family Relationship Centre ?**

Family Relationship Centres have been established to try and get parties to resolve their legal issues concerning their children, as an alternative to taking the matter to Court. Family Relationship Centres, as well as helping parties resolve issues in relation to parenting arrangements, can also assist you and your ex-partner resolve your issues in relation to child support. Family Relationship Centres will screen people who want to attend Family Dispute Resolution (FDR) and may refer you to another service if there are issues which make FDR inappropriate, for example, family violence or child abuse.

### **What if my child has turned 18?**

If your child is 18, but is still at school, then the CSA can continue to collect child support for you until the last day of the school year in which your child turns 18. However, you must apply to the CSA for this before your child turns 18.

After the end of the school year, you (or your child) will need to apply to the Federal Magistrates Court for maintenance. The Court will only consider your request if your child is going on to further study or has special needs. The CSA formula no longer applies. The Court will not only look at the capacities of you and your ex-partner to financially support your child, but will also look at your child's own capacity to earn some money. If, for example, your adult child is living with you and attending university, your ex-partner will still need to make a financial contribution towards their maintenance, but your child should also be doing some casual, part-time work.

### **What if the Father is overseas?**

Many countries (eg, UK, NZ, USA, Philippines) have reciprocal child support arrangements with Australia. This means that you can use the legal system to receive child support from your ex-partner, as long as he/she is living in one of these countries. You should get legal advice if they are overseas.

### **What can I do if my ex-partner doesn't pay?**

The CSA has powers that allow it to collect debts in certain ways. These include, for example, taking your ex-partner's income tax refund and withholding money from his Centrelink payment.

Sometimes it is possible for the CSA to issue a notice against a third party who holds money on your ex-partner's behalf. The notice requires the third party to pay the amount of the child support debt to the CSA. This could be issued, for example, if a sum of money is held in your ex-partner's bank account or in his/her solicitor's trust account.

The CSA does sometimes take Court action to enforce debts (as the debt is technically one owed to the Commonwealth). However, the debt has to be large before they will do this.

You can apply to the Court yourself by filing a *summons* in the Federal Magistrates Court. You (or your legal representative) then have the opportunity to cross-examine your ex-partner in Court as to his/her capacity to pay the money owing. If you decide to do this, you should get legal advice before taking over the CSA's responsibility for the collection of arrears. It can have implications for your dealings with both the CSA and Centrelink.

You can take your matter to Court for the enforcement of any debt which might be owing to you, whilst the CSA continues to collect your child support.

Again, if there are problems in relation to the payment of your child support, you can go to a Family Relationship Centre to try and resolve your matter without having to go to Court.

### **What is lump sum child maintenance?**

In some circumstances you can apply to the Court (Family or Federal Magistrates) for a lump sum child maintenance payment. Examples of such situations are when your ex-partner has a very poor history of making payments over a long period of time or when he/she is likely to receive a lump sum of money (for example, a redundancy payment) and has not provided financial support for your child. Lump sum payments can also be credited pursuant to a Binding Child Support Agreement.

**If my ex-partner doesn't pay, can I prevent him/her from seeing the children?**

The Family Law Act says that a child has the right to spend time on a regular basis with both parents unless it is not in the child's best interests. You should not prevent this simply because your ex-partner is not paying child support. If there are also other reasons why you think it is not in your child's best interests to see the other party then you may want to apply to the Federal Magistrates Court for an order in relation to that. You can then raise the fact that your ex-partner is not paying child support. However, Courts do not often make orders that a child spends no time at all with the other parent.

## Where do I go for information and advice?

### Child Support Agency

general enquiries:	13 1272
information service:	13 1107
change of assessment (review):	13 1141

You also arrange to speak to a CSA officer. You need to make an appointment at least five working days in advance by either telephoning 131 272 or completing the form which is available on their website – <http://www.csa.gov.au>

Locations visited by the CSA in the ACT/NSW region include Goulburn, Nowra, Batemans Bay, Woden and Tuggeranong.

As an alternative to speaking to a CSA officer (either in person or on the phone) you can use CSAonline, which is a new secure internet service available from the CSA's homepage (see website address above).

### Legal Aid Office (ACT)

general enquiries	6243 3411
appointments for advice	6243 3471
legal advice line (weekdays 9am to 4pm)	1300 654 314

### Welfare Rights & Legal Centre:

administration	6257 2931
legal advice line(weekdays 9.30am to 1pm and Monday 2pm to 4pm)	6247 2177 1800 445 665

There is a night time "drop-in" service each Tuesday between 6pm and 8pm.

### About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney-General's Department.