

Stage 3 changes to Child Support from July 2008

It's Child Support (but not as we know it)

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The Child Support Scheme changes are implemented in three stages:

- Stage 1 -1 July 2006
- Stage 2 -1 January 2007
- Stage 3 -1 July 2008

Stage 1 Introduced July 2006

- a. Recognised the costs incurred by non-resident parents on income support who have contact with their children - these parents can receive a "with child" rate of certain income support payments
- b. Introduced statutory test to determine parents' income earning capacity
- c. Reduced the capped child support annual rate from \$139,347 to \$104,702
- d. Enabled non-resident parents to spend a greater percentage of their payments directly on their children (up to 30% of the Child Support assessment)
- e. Increased minimum payment from \$5 a week to about \$6 a week

Stage 2 Introduced January 2007

- a. Changes to the jurisdiction of Family Law Courts:¹
 - replaced Family Law Courts as the independent reviewer of Child Support Agency decisions with the Social Security Appeals Tribunal.
 - permitted parents to bring their own court action for enforcement proceedings to recover arrears whilst CSA continues to collect ongoing payments
 - gave Family Law Courts wider powers to make interim for child support orders
 - generally limiting Retrospective Change of Assessment decisions and departure orders made by Courts to the previous 18 months; and
 - changes to procedures to establish disputed parentage
- b. Gave separating parents 13 weeks instead of 28 days to work out parenting arrangements for the family before their Family Tax Benefit Part A is affected

¹ Refers to Family Court, Federal Magistrates Court and certain State Courts (sec 99(1) CSSA)

Stage 3 Commencing 1 July 2008

- a. A completely new child support formula
- b. A completely new system of Child Support Agreements
- c. Existing Agreements are to be reviewed and many are likely to be terminated
- d. Changes to the treatment of overtime and second jobs where needed for re-establishment costs
- e. Costs of supporting step children may reduce the liability of that parent to pay child support for a biological child
- f. Where a payer has a minimum assessment and more than one case, the payment will be made for each case, not divided between them.
- g. New minimum payment of \$20 per week (with some exceptions).

The new formula

Not even Einstein could explain the 6 new formulae to lawyers. The best approach (and best way to explain it to clients) is to look at the main principles behind the new formula, which are:

- The costs of maintaining a child will be based on a combined income amount for both parents less an amount required for that parent to support themselves.
- Each parent then contributes a share of the costs of maintaining a child based on their share of the combined income with an adjustment based on the proportion of time that the child is in their care (the cost percentage).
- The cost percentage falls within ranges starting at 14%; so that, for example, caring for a child somewhere between 14% and less than 35% of the time will count as meeting 24% of the costs of the child.
- Child Support assessments are related to the age of children; (ie: increase as they become teenagers) and will be adjusted by being linked to a wage index; except that
- Where there are several children in a household an average of the costs of the younger and older children is applied.

Child Support Agreements

From 1 July 2008 there will be 2 types of child support agreement:

- Binding: which is certified by lawyers similar to a Family Law BFA
- Limited: which do not require legal advice but have significant limitations

The features of Limited Agreements include:

- Statutory sunset clause of 3 years following which either party may terminate them
- Require an assessment to be in place when they are signed and acceptance by the Child Support Registrar
- Must provide for a minimum of child support that would be payable under the formula

Agreements can no longer be varied. They must be terminated so that the formula then applies or another agreement entered into.

Existing Agreements:

Having slaved away over many years developing "bullet-proof" child support agreements to form part of a package with property settlement orders, lawyers are faced with the prospect that all this good work will be undone as before July 2008 all existing agreements will be reviewed by the Child Support Registrar and either "deemed" to be a binding agreement or simply terminated. There are some clues about the process and it is likely that if an existing agreement is based on or relies upon the old formula in some or all respects it is likely to be terminated. Great care therefore needs to be taken in drafting a child support agreement before July 2008 to ensure it does not refer back to the old formula.

Overtime and 2nd jobs

Parents can apply to have extra income from overtime and 2nd jobs excluded for up to 3 years after separation if they can establish that the extra amount(s) earned would not ordinarily have been earned but for a separation; ie: extra money required to re-establish themselves.

Step Children

Step-children (any dependent children forming part of the parent's new household) may be taken into account when assessing a parent's obligation to pay child support for their biological children, if those step-children are not supported by both of their biological parents.

Multiple Cases

By multiple cases the CSA refers to a parent who has had children with more than one partner. In that case the cost of each child is calculated individually so that the amounts of child support recognize the differing ages of children from different relationships.

Role of Family Law Courts

Although much of the Courts' role in reviewing departure applications is now undertaken by the SSAT, Family Law Courts still have a role. These include:

- If the Court agrees to combine a Child Support Departure application with other financial proceedings before it or the SSAT has refused to deal with it because of its complexity (sec 116 CSSA);
- Disputed parentage
- Applications for stay of an assessment (and now an enforcement as well) pending final determination of decisions in the SSAT or before the Child Support Registrar
- The Family Court still exercises an Appellate function in relation to Child Support decisions made by Federal Magistrates and errors of law made by the SSAT.

14 November, 2007

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