

Child Support Reform

The Australian Child Support Scheme is undergoing major reform and is being introduced in three stages. The reform is in response to the report of the Ministerial Task Force on Child Support released in June 2005, "In the Best Interests of Children – Reforming The Child Support Scheme". Stages 1 and 2 of the reform have already been introduced and stage 3, under which the most significant change will occur, was introduced on 1 July 2008.

Stage 1

Stage 1 of the reform was introduced on 1 July 2006. From that date the minimal annual rate of child support was increased to \$320.00 and is indexed annually to the consumer price index. The minimum payment again increased on 1 January 2008 to \$339.00 per annum.

The Child Support cap was reduced from \$139,347.00 to \$104,702.00 so that income of a payer over \$104,702.00 will not be taken into account for the purpose of calculating their Child Support liability. This change was in response to research suggesting that high income earners were paying Child Support in excess of the cost of maintaining their children.

Prescribed non agency payments (i.e. payment made by the payer for essential items such as school fees) can be credited towards the payer's Child Support liability up to 30% of the annual liability, an increase from 25%.

In addition, new provisions have been introduced to assess a payer's earning capacity. Where a Court determines that a payer has the capacity to earn an income higher than they are currently earning three criteria must be satisfied:

1. The parent has stopped working, reduced their hours or changed their job pattern of work to reduce their income;
2. The decision is not justified on the basis of their caring responsibilities or state of health; and

3. They have not demonstrated that it was not a major purpose of that decision to reduce the amount of Child Support payable.

Stage 2

Stage 2 was introduced on 1 January 2007. From that date appeals from most objection decisions made by the Registrar of Child Support must be made to the Social Security Appeals Tribunal ("the SSAT"). The appeal must be lodged within 28 days of service of notice of a Child Support Agency objection decision upon a party. An extension of time can be sought if a person has failed to lodge their appeal with the SSAT within a 28 day time period. Decisions of the SSAT are appealable to Court only on questions of law.

The SSAT does not have jurisdiction in relation to appeals relating to paternity and in those cases the parties must appeal to Court. Parties may also appeal directly to Court if they seek a lump sum Child Support order. If a party has another application pending in Court they may bring a departure application to Court (with agreement of the Court) and do not need to go through the administrative process first.

There is an 18 month limit on retrospective changes of assessment without leave of the Court. A Court may however grant leave to order retrospective changes for up to 7 years prior to the application being made.

A parent may enforce a Child Support debt through the Court even if their case is still registered for collection by the Child Support Agency.

Stage 3

Stage 3 of the reform was introduced on 1 July 2008. The major change is a new Child Support formula which will be referenced to both parties' incomes and the costs of raising a child which is apportioned between the parties, depending upon the amount of time the child spends with each of them. A higher level of Child Support is payable for children over the age of 12 years.

Six new formulae will apply to determine the Child Support payable however in 90% of cases formula 1 will be applicable.

Under Stage 3 a new minimum Child Support amount of \$20.00 per week will apply unless the payer can establish that their taxable income is very low.

The new Child Support formula treats each parent's income in the same way, subtracting the self support amount of approximately \$18,252.00 per annum. The self support amount is the amount deemed necessary for the parties to support themselves. This amount is not taken into account when calculating their Child Support incomes. The self support income is indexed annually to the consumer price index.

The basis formula, formula 1, which applies in 90% of cases involves eight steps which are as follows:

- Step 1. Work out each parent's Child Support income;
- Step 2. Work out the parent's combined Child Support income for a child;
- Step 3. Work out each parent's income percentage for the child;
- Step 4. Work out each parent's percentage of care for the child;
- Step 5. Work out each parent's costs percentage for the child;
- Step 6. Work out each parent's Child Support percentage for the child;
- Step 7. Work out the costs of the child;
- Step 8. Work out Child Support payable.

In practice, parties will be able to work out an estimate of Child Support payable by entering all of the relevant information into the Child Support calculator on the Child Support Agency website.

Step 1 Work out each parent's Child Support income

A parent's Child Support income is their adjusted taxable income (their taxable income, reportable fringe benefits, target foreign income, net rental property loss and tax free pensions or benefits) less their self support amount less any allowance for relevant dependants as may be applicable. Currently the self support amount for payers is approximately \$14,600.00 while the payee has a disregarded income amount of approximately \$43,600.00. This has been seen as inequitable and therefore the new self support income of \$18,252.00 for both payer and payee has been introduced.

Step 2 Work out the parent's combined Child Support income for a child

This is worked out by simply adding each parent's Child Support income together.

Step 3 Work out each parent's income percentage for the child

This is the percentage of each party's income of their combined Child Support income. For example if the payer's Child Support income is \$100,000.00 and the payee's Child Support income is \$50,000, the payer's income percentage will be 66.66% and the payee's income percentage will be 33.33%.

Step 4 Work out each parent's percentage of care for the child

Work out how many nights per annum the child is in the care of each respective parent. If a parent with whom the child does not live has care of the children for more than 52 nights per annum, this will be taken into account in calculating their Child Support liability.

Step 5 Work out each parent's costs percentage for the child

This can be worked out via the cost percentage table:

Number of nights per annum	Percentage of care	Cost percentage
0 – 51	0 – 13%	Nil
52 – 127	14 – 34%	24%
128 – 175	35 – 47%	25% plus 10% for each percentage point over 35%
176 – 189	48 – 52%	50%
190 – 237	53 – 65%	51% plus 2% for each point over 53%
238 – 313	66 – 86%	76%
314 – 365	86 – 100%	100%

Step 6 Work out each parent's Child Support percentage for the child

The Child Support percentage is their income percentage for the child less their costs percentage for the child.

Step 7 Work out the costs of the child

The costs of the child are ascertained by reference to the costs of children table which is available on the Child Support Agency website. Children under the age of 13 years are distinguished from children aged 13 years and over on the basis that older children costs more than younger children. For example, the costs of one child under 13 years of age whose parents' combined Child Support income is between \$50,649.00 and \$75,972.00 is \$8,104.00 plus \$0.12 for each dollar over \$50,648.00. A child over the age of 13 years whose parents' combined Child Support income is between \$50,659.00 and \$75,972.00 amount costs \$11,396.00 plus \$0.12 for each dollar over \$50,648.00.

Children whose parents' combined Child Support income is over \$126,640.00 cost a set amount. For example, an only child of 14 years whose parents' have a combined Child Support income of \$150,000.00 has a set cost of \$19,246.00.

Step 8 Work out Child Support payable

This is calculated by multiplying a parent's Child Support percentage for the child by the costs of the child. If a parent does not have a positive Child Support percentage, child support is not payable by that parent. A negative Child Support percentage in Step 6 means that a party will be entitled to receive Child Support from the other party.

Child Support Agreements

Reform of legislation regarding Child Support Agreements also came into effect from July 1 2008. From the date there are two types of Agreements.

1. Limited Child Support Agreement.
2. Binding Child Support Agreement.

Limited Child Support Agreement

Limited Child Support Agreements can be made without legal advice but must be in writing and must be signed. They must also be accepted by the Registrar of Child Support before they come into effect. There must be an administrative assessment of child Support in force in relation to the child before a limited Child Support Agreement will come into effect. The Registrar of Child

Support will only accept a Limited Child Support Agreement if the amount of Child Support payable is at least that which would otherwise be payable under the formula. Limited Child Support Agreements have a sunset clause so that after three years has elapsed, either party can unilaterally terminate them. Prior to that a Limited Child Support Agreement can be terminated by the parties' written agreement or if the parties enter a new Child Support Agreement. A party can also unilaterally terminate an Agreement if a notional assessment varies more than 15% from the last notional assessment in circumstances not contemplated by the parties. A Court can set aside a Limited Agreement in certain circumstances.

Binding Child Support Agreements

A Binding Child Support Agreement must comply with the same formal requirements as a Limited Child Support Agreement however the parties must both obtain independent legal advice in relation to the Agreement. A Binding Child Support Agreement may provide for a lower rate of Child Support than would be payable under the formula. Parents who enter into a Binding Child Support Agreement that receive less Child Support than would otherwise be payable under the formula, would not be entitled to additional family tax benefit payments as a result of entering into the Agreement. Binding Child Support Agreements cannot be varied but can be terminated if the parties enter into a new Binding Agreement or a Termination Agreement. A Court will only be able to set aside a Binding Agreement in very limited circumstances.

More detailed information about the new Child Support Reform can be obtained from the Child Support website: www.cas.gov.au. Payers and payees can also estimate their new Child Support payments using the Child Support calculators on the site.

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