



Legal Services Commission
OF SOUTH AUSTRALIA

CHILD SUPPORT

This information is general and not a substitute for legal advice. The Legal Services Commission provides free advice for most legal problems.

Contact the Legal Helpline 1300 366 424

(TTY 8463 3691) www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

CHILD SUPPORT SCHEME

Under Australian law, separated parents (including same sex parents) have a duty to provide a proper level of financial support for their children. The scheme provides a flexible way of ensuring that children are supported by their parents, often with the assistance of government benefits.

WHAT DOES THE CHILD SUPPORT AGENCY DO?

The Child Support Agency (CSA) administers the Child Support Scheme. CSA can assess how much child support should be paid and can collect and distribute the payments.

The child support assessment can be based on

- a mathematical formula, or
- a child support agreement made by the parents.

To make an application for a child support assessment, call the Child Support Agency on 131 272.

CHILD SUPPORT FORMULA

The child support formula is complex, and is based on:

Parents' incomes - the formula allows each parent a portion of their income for self support, and is further adjusted if either parent supports other biological or adopted children. The combined income of the parents establishes the costs of raising children in a family with that level of income.

Costs of children - Australian research has been used to create a 'Costs of Children' table. The costs vary with the number and ages of the children. The costs of the children are shared between the parents:

- a) in proportion to their individual incomes, and
- b) after adjustments are made for the care provided by each parent.

Level of care - providing care for children is counted as contributing to the costs of raising children, just as providing periodic payments of child support is a contribution to their costs.

The following table shows how care (nights per year) is converted into a percentage of the child's costs.

Nights

0-51	Less than Regular Care	= 0%
52-127	Regular Care	= 24%
128-237	Shared Care	= 25-75% (sliding scale)
238-313	Primary Care	= 76%
314-365	Greater than Primary Care	= 100%

WHAT IF THE ASSESSMENT IS NOT FAIR?

Problems can arise if the income figures or care percentages that are used in the assessment are not accurate.

CARE ARRANGEMENTS

The Child Support Agency should be informed of any changes in care arrangements as soon as possible. If parents cannot agree about the level of care that is to be used in the assessment, CSA will make a decision.

INCOME ESTIMATE

If the income used in the assessment is not correct, it can be changed by

- lodging an Estimate of Income, or
- applying for a Change of Assessment in Special Circumstances.

CHANGING YOUR ASSESSMENT IN SPECIAL CIRCUMSTANCES

An application to change your assessment can be made for any of the following reasons:

- High costs of contact
- Special needs of the child
- Agreed education costs
- Income or property of the child
- Income or property provided for the child
- High child care costs
- Special self support expenses
- Income, earning capacity, or property of either parent is not accurately reflected in the assessment
- Legal duty to support another person
- Responsibility to maintain other resident children (eg step children)

A change to the assessment for a period more than 18 months in the past can only be made with the permission of a court.

WHO CAN HELP ME?

Free advice and assistance with Change of Assessment application and response forms can be obtained by calling the Child Support Help Line (8463 3576).

WHAT IF I DISAGREE WITH THE CSA?

Lodge an Objection

Parties can object to many decisions made by CSA. Usually the objection must be made within 28 days, and must be in writing.

Appeal to the SSAT

If a party is dissatisfied with an objection decision, an appeal can be made to the Social Security Appeals Tribunal by telephone on 1800 011 140. An appeal to the SSAT can only be made after the decision has been reviewed by a CSA Objections Officer.

Call the Child Support Help Line (8463 3576) to seek advice about all objections and appeals regarding CSA decisions.

CHILD SUPPORT AGREEMENTS

There are two types of child support agreements:

Limited Child Support Agreements – these agreements must be in writing, signed by both parties, and provide for at least as much child support as would be payable under a child support formula assessment. Limited Agreements can be terminated by either party after 3 years, or sooner in some cases. They can also be terminated by agreement or by court order.

Binding Child Support Agreements – these agreements can be for less than, or more than, the amount payable under a child support formula assessment. Binding Child Support Agreements can also include lump sum payments, but special requirements apply. Each parent **must** obtain independent legal advice and the agreement must include certificates from their lawyers stating that advice has been given about the effect of the agreement on the rights of the individuals, and the advantages and disadvantages of entering the agreement. Parties should disclose all relevant financial information. A court can set aside an agreement obtained by fraud, coercion or failure to disclose material information. Binding Child Support Agreements can only be ended by a further Binding Child Support Agreement or, in exceptional circumstances, by a court order. Parties should be aware of the way a child support agreement affects their entitlement to Family Tax Benefit (A).

Always obtain legal advice before signing a child support agreement.

Call the Child Support Help Line (8463 3576) if you are considering a child support agreement.

COURT APPLICATIONS

For some matters, an application must be made to a court.

Parentage Disputes – Either parent can apply to a court to resolve disputes involving parentage and entitlement to child support. The court may order DNA parentage testing in these cases. If a payer is found not to be a parent of the child, a court may order repayment of any child support paid.

Application for Leave to Change an Assessment that is more than 18 months old – A court can give permission (leave) to change an assessment that is more than 18 months old, but not more than 7 years old.

Application to Change an Assessment (Complex Matters) – If a matter is considered too complex to be dealt with in the administrative Change of Assessment process, an application can be made directly to court to have the assessment changed.

Child Support Agreements - Applications can be made to set aside child support agreements.

Lump Sum Applications – In limited circumstances, a court may order the payment of child support in a lump sum.

Stay Orders – A stay order can be sought from a court in limited circumstances. Alternative administrative remedies may also apply in some circumstances.

Court Review of SSAT Decisions – A court can review SSAT decisions, but only on a question of law.

Enforcement Proceedings – Either CSA or a payee can seek to enforce the payment of a child support debt.

Court Ordered Maintenance – A court can order spousal maintenance or adult child maintenance for children over 18 years who are completing their education or who have a disability.

Call the Child Support Help Line (8463 3576) to obtain legal advice before making any court application.

COLLECTION AND ENFORCEMENT

Parents can make a private payment arrangement, or ask CSA to transfer payments.

Although CSA encourages voluntary collection arrangements, private collection is only recommended in cases where the payer is likely to pay or has a good payment history.

If a payer is in arrears, CSA can enforce the debt by arranging wage deductions, intercepting tax refunds, collecting from a third party (eg a bank or insurance company), intercepting the proceeds of sale of property, preventing overseas travel, or issuing enforcement proceedings in court.

Penalties are usually applied for late payment or non-payment of child support.

OVERSEAS CHILD SUPPORT

Australia has reciprocal arrangements with many countries for the collection of child support overseas. If the receiving parent is living in Australia and the paying parent is living in a reciprocating country, it is likely that the Australian Child Support Agency will be able to issue and enforce an Australian assessment of child support. Arrangements with each particular country differ, and some countries have better collection arrangements than others.

Disputes about parentage will need to be resolved before an assessment can be created. This can be difficult where one of the parents resides overseas.

In some cases where Australia does not have reciprocal arrangements with the country where one parent is residing, there may still be options for the receiving parent to obtain child support. This is a complex area of law and legal advice should be obtained in each individual case.

Parents in Australia who have children living overseas may also be required to pay child support through the Australian Child Support Agency. Often this child support has been ordered by a court in the country where the children reside.

If you have a dispute regarding the level of child support you are required to pay, you may be able to bring an application to an Australian court to review that overseas maintenance liability.

Call the Child Support Help Line on 8463 3576 to obtain specialist advice and assistance in this area. Enquiries from parents who reside overseas can be directed to lscchildsupportunit@sa.gov.au

CENTRELINK MATTERS

To claim Family Tax Benefit (A) for a child, a person must be caring for the child for at least 35% of the time. Parents who receive more than the minimum amount of FTB(A), must take reasonable action to obtain child support from the other parent. Child support payments can affect the amount of FTB(A) that is payable.

If you have a private collection arrangement, Centrelink will assume that you are receiving all of your child support payments, and calculate your FTB(A) accordingly. If this is not the case, you can ask CSA to collect the payments. Talk to Centrelink about how your FTB(A) is calculated and paid.

ADULT CHILD MAINTENANCE (over 18)

Parents may continue to have a legal duty to financially support adult children if they are unable to fully support themselves because they are completing their education, or they have a disability. For more information, see our pamphlet ADULT CHILD MAINTENANCE.

ABOUT THE CHILD SUPPORT UNIT

The Child Support Unit of the Legal Services Commission operates the Child Support HelpLine (8463 3576 or 1300 366 424 for country callers) which offers free confidential legal advice and assistance in relation to all child support and maintenance matters.

If issues cannot be resolved by telephone advice, a free advice appointment may be made. A service is provided from our Adelaide, Elizabeth, Noarlunga and Mt Barker offices.

Interpreters can be arranged for non-English speaking clients.