



Forte Family Lawyers staff at launch

Child Support Reforms

In the last edition of *Forte Family Law* we outlined the first phase of changes to the Child Support Scheme. These came into effect on 1 July 2006. The Federal Government has recently passed legislation to cover the next two phases of reform.

In this edition of *Forte Family Law* we give details of more important aspects of the next two phases of proposed child support reform.

Review of CSA decisions

From 1 January 2007, parents who object to a decision of the Child Support Agency ("CSA") can apply to the Social Security Appeals Tribunal ("the SSAT") for a review of the decision. Currently, parents can only apply to a Court.

It is hoped that the SSAT will offer a more expedient, informal and cost effective avenue for parents seeking a review of CSA decisions.

As a result of the changes, the Family Court and the Federal Magistrates Court will deal with very few child support cases, mainly those related to applications for property settlements, enforcement applications, and appeals from the SSAT on questions of law.

Child Support Agreements

Many parents enter into Child Support Agreements to document any variation to the child support formula. From 1 July 2008, there will be two categories of Child Support Agreements, being 'Binding Child Support Agreements' and 'Limited Child Support Agreements'.

Binding Child Support Agreements

A Binding Child Support Agreement requires both parties to receive independent legal advice before signing it. The requirements are similar to Financial Agreements (dealing with property or spousal maintenance).

A Binding Child Support Agreement cannot be set aside by the CSA. It can only be set aside by the Court in limited circumstances, such as fraud, duress, a significant change in circumstances or if the agreement sets a rate of child support that is not "proper or adequate". The cost of litigation is likely to be a significant deterrent to such an application.

Limited Child Support Agreements

A Limited Child Support Agreement has less formal requirements. Parents do not need independent legal advice.

Importantly, a Limited Child Support Agreement cannot set the child support at a lower level than it would be under an administrative assessment.

In certain circumstances the CSA will be able to set aside a Limited Child Support Agreement. The circumstances include:

- If new circumstances arise which result in the 'notional formula assessment' of child support being varied by more than 15%. For example, if a party's income changes or they lose their job, the CSA may set the agreement aside.
- After three years, either party can ask the CSA to terminate the agreement.

Existing Child Support Agreements

Many parents have existing Child Support Agreements. The changes proposed to commence on 1 July 2008 may affect them.

The CSA will review all existing Child Support Agreements before 1 July 2008 and determine whether or not they are to be treated as Binding Child Support Agreements or be terminated. This decision may be appealed to the SSAT.

It is unclear on what grounds the CSA will decide whether an existing Child Support Agreement will continue to be binding or whether it will be terminated. This will create uncertainty for parents who have existing Child Support Agreements.

Entering a Child Support Agreement before 1 July 2008?

Many parents will negotiate arrangements for child support between now and 1 July 2008. It could be particularly advantageous for some primary carers to enter into a Child Support Agreement to avoid the impact of the new formula.

However, any parent entering into a Child Support Agreement before 1 July 2008 should be aware of the risk that their Child Support Agreement may be terminated by the CSA in July 2008.

Hopefully, some guidance will be provided soon as to the grounds on which the CSA will make determinations about existing Child Support Agreements.

The New Child Support Formula

The most important change to the child support scheme is the introduction of a new formula from 1 July 2008. For the majority of parents, the amount of child support that they pay or receive is determined by a formula applied by the CSA.

The new formula will apply to existing child support assessments as well as new assessments.

How does the new formula work?

The new formula is quite different. Some of the major changes are:

1. It places greater weight on the incomes of both parents than the existing formula, which focuses primarily on the income of the paying parent.
2. The amount of time a paying parent spends with the children will be affected by the amount of child support paid, from 51 nights per year, rather than from 109 nights.
3. If the children spend between 14 and 34% of their time with the paying parent, the paying parent will be deemed to be incurring 24% of their costs. For care of 35%, 25% of the costs are deemed to be met, rising to 50% when care is equally shared.
4. Payers who deliberately minimize their income will generally be deemed to be able to afford \$20 per week per child.
5. The costs of children on which the formula is based, has been changed. It has been updated and also provides for different percentages for children aged 0-12 and 13 and over.
6. The primary carer will keep all of any Family Tax Benefit unless there is shared care (35% or more).

Example:

Jack and Jill separate. There are three children of their relationship, Adam aged 9, Belinda aged 8, and Cameron aged 5. The children live with Jill and spend time with Jack each alternate weekend from Friday afternoon to Sunday night and for one half of all school holidays. This means that the children spend about 74 nights with Jack each year and live with Jill for the rest of the time.

Jack has a taxable income of \$90,000 per annum. Jill has a taxable income of \$50,000 per annum.

The new formula will apply to Jack and Jill as follows:

1. The CSA calculates their child support income. An amount of \$16,883 is deducted from each parent's income as necessary self support. Jack's child support income is \$73,117 and Jill's child support income is \$33,117. Jack earns 68.83% of their combined child support income.
2. The CSA calculates Jack's "child support percentage". Whilst Jack earns 68.83% of the combined child support income, he is not required to meet that percentage of the children's costs. An allowance is made for the fact that Jack incurs expenses when the children are spending time with him. The children spend about 20% of their time with Jack, so Jack is presumed to meet about 24% of the costs of the children. Jack's child support income percentage of 68.83% is therefore reduced by 24% to take account of the time he cares for the children. This gives Jack a child support percentage of 44.83%.
3. The CSA calculates the "costs of the children" by reference to a table, which provides an estimate of the average costs of children taking into account their ages and the combined income level of the parents. In the case of Jack and Jill, the costs of caring for the three children is estimated to be \$26,719.

4. Jack's child support percentage is multiplied by the costs of caring for the children. The amount of child support that Jack has to pay is 44.83% of \$26,719, which is \$11,987 annually or around \$230 per week.

This is just one example of the operation of the new formula. There are 6 different formulas that the CSA will apply to different circumstances.

Old vs. New: A comparison to the current formula

Under the current formula, Jack is required to pay Jill child support of \$23,026 per annum, or around \$441 per week. Under the new formula Jack's child support liability will be almost 50% less. Jill will be \$11,048 worse off in the first year under the new formula.

The new formula assumes that Jack will pay 24% of the children's costs because he has the children for 20% of the time. Interestingly, if Jack does pay for items such as school fees, uniforms and medical expenses, he can also ask the CSA to credit these payments against up to 30% of his cash child support obligation.

The consequences of the new formula will be significant, particularly for homemaker parents who have made financial commitments relying upon their existing child support income. We expect that the SSAT will be busy in its new role when the new formula takes effect in July 2008!

Although legal representation in the SSAT is discouraged and there will be no costs orders, we expect to be assisting our clients to prepare written and verbal submissions and obtain evidence.

Parenting Plans dealing with adult child maintenance

Parents often want to document an agreement about financial support for children over 18 who are, or who are expected to be, still financially dependent. Child support assessments and agreements automatically terminate upon a child turning 18 or finishing their secondary education. In reality many children, particularly those in tertiary education or with disabilities, continue to rely upon the financial support of their parents well beyond their 18th birthdays.

A parent seeking financial support from the other parent for a child over the age of 18 may apply to the Court for a child maintenance order. If parents agree, a less expensive and less complicated alternative is to enter into a Parenting Plan which deals with child maintenance. If the Parenting Plan is registered with the Court, the child maintenance provisions have effect as if they were a child maintenance order made by the Court.

Legislation Update

Federal Magistrates Court jurisdiction

The Federal Magistrates Court now has unlimited monetary jurisdiction in family law property cases. Previously, this Court could only hear property cases if the gross value of the assets in dispute was less than \$700,000. Cases are generally listed for trial much sooner than those in the Family Court, but a 2 day hearing limit applies.

Capital Gains Tax ("CGT") rollover relief

CGT rollover relief will be extended to transfers of asset arising from Financial Agreements and Arbitration Awards made under the *Family Law Act*, and to binding agreements between de facto partners. The legislation was passed by Parliament in early December 2006.

De facto property disputes

We are still waiting for the Bill referring powers to deal with de facto property settlements to the Family Court and Federal Magistrates Court. The Bill is expected to be tabled soon, and may commence on 1 July 2007. It is likely that the wording of the Bill will give heterosexual de facto couples almost the same rights as legally married couples. It is possible, though, that certain aspects of the law will be interpreted differently by the Courts.

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