

# Maintenance and child support

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# 1. Introduction

## 1.1 Scope of chapter

- This chapter looks at the relationship between “**maintenance**” and the Social Security system. The term “maintenance” is used to cover **all payments** made between separated parents to support their children. Maintenance income will also include payments made by the partner or former partner of a child’s parent. These payments are also known as “**child support**” payments.
- Centrelink also uses the term “maintenance” to describe payments made to a person by a former partner for that person’s own upkeep. These payments are usually known as “spousal maintenance”. Unless otherwise stated, this chapter uses the term “maintenance” to refer to payments made to a person for the benefit of a dependent child.
- The chapter looks at the ways in which maintenance affects Social Security payments. It is not intended as a comprehensive overview of the Child Support Scheme. Clients should be referred to the Child Support Agency (CSA), Legal Aid or a generalist Community Legal Centre for advice on their maintenance entitlements. Up to date information on these entitlements and on the administration of the Child Support Scheme is available on the CSA’s website at [www.csa.gov.au](http://www.csa.gov.au).
- The information in this chapter is current as at 1 July 2008. The information is based on legislation already passed at the time of writing (12 May 2008), however, the relevant departmental policy was not available at that time.. This means that much of the policy that is relevant to the administration of child maintenance affected payments could not be included in this chapter. It will be included in the ONLINE edition as soon as it is available.

## 1.2 Overview

- The Child Support Agency (CSA) is the Commonwealth Government agency that has responsibility for assessing, collecting and distributing maintenance payments between separated parents.
- The CSA calls the parent who *receives* child support the “receiving parent”. Centrelink calls this parent the “resident parent” because the children mainly live with that parent. This chapter uses the term “resident parent”.
- The CSA calls the parent *paying* child support the “paying parent”. Centrelink normally uses the term “non-resident parent” because the children do not live with that parent. This chapter uses the term “non-resident parent”.

- > Generally, in order to receive Family Tax Benefit A at more than the minimum rate, a resident parent is obliged to seek maintenance. There are some exemptions to this requirement (see section 3).
- > In most cases, a resident parent may only be entitled to maintenance where their dependent child is under 18, unmarried, and either an “Australian resident” or “living in Australia”. Where the child has turned 18 and is still completing high school, the resident parent may apply for maintenance to continue until the end of the school year.
- > Maintenance income is not assessed under the ordinary income tests for Social Security and Family Assistance payments.
- > For Family Assistance payments there is a special “Maintenance Income Test”, which applies only to maintenance income. The ways in which the Maintenance Income Test assesses maintenance are canvassed in section 3. Through the application of the Maintenance Income Test, maintenance payments can affect the rate of Family Tax Benefit Part A, but cannot reduce Family Tax Benefit Part A below the minimum rate.
- > For Social Security payments, the only way in which maintenance income affects the rate of payments is through the operation of the “Parental Income Test” that applies to Youth Allowance (see **Chapter 15**).

## 2. Receiving and paying maintenance – an overview

### 2.1 Introduction

- > The Child Support Scheme sets out the ways in which separated parents can make financial arrangements for their children. Some of the options available to parents for working out how child support is to be paid are outlined in 2.2. As stated in section 1 however, this Chapter is not intended as a comprehensive overview of the Child Support Scheme. People should be referred to the Child Support Agency (CSA), Legal Aid or a generalist Community Legal Centre for advice on their maintenance entitlements. Up to date information on these entitlements and on the administration of the Child Support Scheme is available on the CSA’s website at [www.csa.gov.au](http://www.csa.gov.au).
- > Non-resident parents who are receiving a Social Security payment may have the child support they owe to a resident parent taken out of their Social Security payment directly (see 4.2).
- > Some resident parents could miss out on part of their Family Tax Benefit payments if they do not show that they are taking “reasonable maintenance action”- see 2.4 and 2.5 below.

### 2.2 Receiving and paying child support- an overview

- > At the core of the Child Support Scheme is the “Child Support Formula”. This

formula works out a person's child support entitlement or liability by taking into account such factors as each parent's income and the amount of care they provide to their child or children. A person wishing to find out more about how this formula applies to them should contact the Child Support Agency directly.

- The Child Support Formula is also relevant in working out the amount of Family Tax Benefit (FTB) (Part A) that a person is entitled to. The annual rate of child support that would be payable under the Child Support Formula is called the "notional assessment" amount. In some circumstances parents can agree to pay an amount different to the amount worked out as the notional assessment.
- Separated parents can make agreements about how much child support is to be paid. Child support agreements fall into three broad categories:

#### **Binding child support agreements**

- these agreements can be for any amount of child support that parents agree to, even if the amount is less than the notional assessment amount. Each parent must obtain independent legal advice about the effect of the agreement before entering into one. A parent may be missing out on FTB (Part A) payments if they agree to receive less than the notional assessment amount – see 3.4 below.

#### **Limited child support agreements**

- these agreements can be registered with the CSA. They can be made without obtaining legal advice. However, a limited agreement about the amount of child support payable must be at least equal to the notional assessment amount, worked out by applying the Child Support Formula.

#### **Lump sum payment agreements**

- a binding child support agreement can provide for some or all of the child support to be paid by a lump sum instead of by regular payments. This could include a transfer of property. In these cases the CSA will first assess the amount of child support payable under the Child Support Formula. The lump sum will be credited against the amount of child support payable under the formula assessment. This will continue until the lump sum is reduced to nil after which periodic payments of child support should recommence.

#### **Minimum amount of child support**

- Since July 1999, all non-resident parents are required, by law, to pay a minimum amount of maintenance. This includes non-resident parents in receipt of Social Security payments.
- From 1 July 2008, the minimum child support that must be paid is \$339 per year. This minimum liability can be administered through the Child Support Agency (CSA).
- Where the non-resident parent receives a Social Security payment and pays maintenance to more than one family, they will pay a minimum amount of \$12 per fortnight to *each* family. Where the non-resident parent receives a Social Security payment and pays maintenance to more than three families, the total amount paid to all families will be \$38 per fortnight. This amount will be divided equally between the families.

- Where the non-resident parent has care of the child of at least 14% and receives a Social Security payment, the minimum amount owed to a resident parent will not need to be paid.

### 2.3 Collection of maintenance from Social Security and Family Tax Benefit payments

- Collection from Social Security payments
- The CSA can send a notice to Centrelink requiring that the maintenance be deducted directly from a person's Social Security payment and that the money be transferred to the CSA for payment to the resident parent.
- To have the deduction stopped, a non-resident parent must be in financial hardship. They may ask that the deduction be *suspended*. To do this, a person must approach the CSA, *not* Centrelink.
- Collection from Family Tax Benefit payments
- In some circumstances, the CSA may also recover maintenance debts from a person's Family Tax Benefit payments.
- Where:
  - a person has failed to pay a maintenance debt in respect of one or more children for whom that person was required to pay maintenance; and
  - that person is currently entitled to be paid Family Tax Benefit for those children,
- then deductions may be made from that person's Family Tax Benefit entitlements in order to recover the maintenance debt. The amounts recovered are paid to the CSA for payment of the maintenance debt. Such amounts may only be recovered by the Child Support Registrar at the CSA by giving written notice to Centrelink. The written notice must either state the dollar amount to be recovered, or must refer to the statutory formula for working out the recoverable amount. The statutory formula takes into account whether the debtor is on an income support payment, the number of children in the debtor's care, and how many of these children are children in respect of whom the maintenance debt accumulated.
- Centrelink must not allow recovery of maintenance debts from advance payments of Family Tax Benefit. They may only be recovered from fortnightly payments of Family Tax Benefit or lump sum payments of Family Tax Benefit. If a person disagrees with the calculation and recovery of a maintenance debt through their Family Tax Benefit payments, then they should be encouraged to appeal. The same appeal mechanisms that apply to other Social Security and Family Assistance matters also apply to these decisions (see Part 20).

## **3 Requirement to seek maintenance – Family Tax Benefit Part A**

### **3.1 When must maintenance be sought?**

- In order to be eligible for *more than the minimum amount* of Family Tax Benefit (FTB) Part A, a resident parent who has claimed FTB Part A must take “reasonable action” to obtain maintenance from the other parent of the child. This action must be taken within 13 weeks from the later of:
  - the date of birth of the “FTB child” (see **Chapter 32**, 2.2); or
  - the date of separation of the resident parent and non-resident parent; or
  - where there has been a change of care arrangements, the date that the child came into the resident parent’s care.
- “Reasonable action” is defined in Centrelink’s Guidelines but not in legislation. The requirement to take “reasonable action” to obtain maintenance is sometimes referred to as the “maintenance action test”.
- For most parents, reasonable action on the part of the resident parent will require the completion of a child support assessment form and:
  - having the CSA collect the payments; or
  - privately collecting no less than the amount specified in the assessment; or
  - lodging a Child Support Agreement.
- Failure to take reasonable action to obtain maintenance may result in the reduction of FTB Part A entitlements to the minimum rate unless the person has an exemption (see 2.7). However, FTB Part A cannot be reduced *below* the minimum rate due to failure to take reasonable action to obtain maintenance.
- In some cases, Centrelink will conduct reviews of a person’s circumstances, in order to make sure that the person is taking steps to obtain maintenance. Centrelink’s guidelines set time limits for the review of a person’s circumstances. These guidelines state that a person’s situation will be reviewed after 14 days, where that person has applied to the CSA for maintenance, but is not yet receiving payment, or has not yet been advised of the amount assessed.
- Where paternity is in dispute, a resident parent has 90 days to take action to prove their child’s paternity, before their situation will be reviewed by Centrelink. In such a case, it is best to consult a Legal Aid Commission or a generalist Community Legal Centre for advice.
- Where a person is seeking an exemption from having to obtain maintenance, Centrelink allows a 60 day period before the person is subject to review. Once a person is notified that an application for an exemption has been denied, Centrelink will give that person a 14 day period in which to take steps to obtain maintenance.

### 3.2 Exemptions from taking “reasonable action” to obtain maintenance

- At the time of writing, a person who has less than 30% care of a child is not required to take reasonable action to obtain maintenance. It was not clear, at the time of writing, whether this policy guideline would change after 1 July 2008.
- A person may obtain an exemption from seeking maintenance where:
  - there has been actual violence, or where there is a fear of violence, from the other parent, or some other concern for the health or safety of the resident parent or child; or
  - where it would be unreasonable to expect the person to seek maintenance because of the harmful or disruptive effect it would have on either parent (eg where it would be very emotionally difficult for the person to pursue child support, such as where the child was conceived after rape or incest); or
  - where the child was conceived through artificial insemination and the mother was neither married nor in a marriage-like relationship at that time; or
  - the father’s identity is unknown; or
  - there is legal advice that the mother could not prove paternity through a court or has unsuccessfully tried to prove paternity; or
  - the mother has been unsuccessful in proving paternity, eg, has been unsuccessful in her attempts to locate the father; or
  - there are cultural considerations, ie, where seeking child support or paternity would cause hardship to the resident or non-resident parent or their community;; or
  - where there are other exceptional circumstances.
- These cases can be very sensitive. The resident parent should ask to see a Centrelink social worker if they are not referred to one. Although unwillingness to name the father is not of itself a ground for an exemption, it may indicate that there is a fear of violence or some other reason which should result in the resident parent not having to claim maintenance in respect of a child in their care. Exemptions may be reviewed by Centrelink, depending on the circumstances in which the exemption arose.
- Parents who are in any case only eligible for the minimum rate of Family Tax Benefit A are not required to take reasonable action to receive maintenance. This includes parents of children between 16 and 18.
- Parents who are permanently blind and are receiving Disability Support Pension or Age Pension are not affected by the maintenance action test.

## 4. Effect of maintenance income on Family Tax Benefit Part A

### 4.1 Maintenance income and FTB Part A: an overview

- Maintenance income may affect a person's rate of Family Tax Benefit (FTB) Part A through the operation of the Maintenance Income Test- see **Chapter 32** for details of the components of FTB, and 3.6 for an overview of the Maintenance Income Test).
- Sometimes maintenance is paid by a person **for the support of an ex-partner**, rather than a child. This is usually known as "spousal maintenance". As with maintenance paid for the financial support of a child, spousal maintenance may affect a person's rate of FTB Part A, through the operation of the Maintenance Income Test.
- The Maintenance Income Test is applied separately and in addition to the ordinary income test that also applies to FTB. When working out a person's rate of FTB Part A, the Maintenance Income Test should be applied *after* any reduction due to the ordinary income test is calculated.
- The Maintenance Income Test is set out in Table 35.1. The free area, below which there is no effect on the rate of FTB, is adjusted on 1 July each year. The current income free areas that apply to the Maintenance Income Test are set out in Table 35.1.
- The Maintenance Income Test does not apply where:
  - the person or their partner is permanently blind and receives Age Pension, Disability Support Pension or a service pension; or
  - the maintenance is paid for a child for whom FTB is not payable (eg a child over 16 years on Youth Allowance); or
  - the maintenance is paid for a non-dependent child; or
  - the maintenance is provided for expenses due to a dependent child's disability or learning difficulty (see 3.7).
- For information on the effect of maintenance income on Social Security payments, see 4.6 below.

### 4.2 What is maintenance income?

- Maintenance income includes payments for the resident parent as well as payments for the child. The forms which maintenance income may take are:
  - **"periodic cash maintenance"** – money paid periodically to the resident parent or child (not including reasonable "pocket money"). Money paid through the CSA, including Non-Agency payments, will normally fall within this category. Non-Agency Payments are maintenance payments that are made by a non-resident parent who is registered with the CSA directly to the resident parent, or to a third person, and are reported to the CSA;

- **“non-cash maintenance”** – non-monetary assistance (eg the provision of clothing, mortgage or rent payments) provided periodically to the resident parent or child, or money or other assistance provided periodically to some other person (eg, a grandparent) on behalf of the resident parent or child (eg payment of school fees to the child’s school); and
- **“capitalised maintenance income”** – money or other assistance provided on a “one-off” basis to the resident parent or child, or to someone on their behalf (eg payment of a large lump sum).

### 4.3 Estimating maintenance income

- A person’s entitlement to Family Tax Benefit (FTB) is worked out at the end of each financial year after a “reconciliation” process (see Chapter 32).
- Parents who wish to receive FTB as fortnightly payments throughout the year must, among other things, estimate the amount of child support they will receive for that year. This estimate will then be compared to the amount of maintenance actually received throughout the year, and adjustments will be made according to the “reconciliation” process.
- This section explains how Centrelink estimates the child support on which it will work out the rate of a person’s fortnightly FTB payments.
- **Special rules apply to child support agreements that are registered with the Child Support Agency (CSA) and to court orders.** For further information on the assessment of maintenance where there is a child support agreement or a court order in place, see 4.4.
- Three different maintenance income assessment methods are available to people who wish to have their Family Tax Benefit (FTB) Part A paid to them in fortnightly instalments, rather than as an end of year lump sum. The three methods are:
  - the “entitlement assessment”;
  - the “disbursement method”; and
  - the “modified entitlement” method”.
- **Entitlement method**
- **This method assesses a person’s fortnightly rate of FTB Part A based on the amount of maintenance specified in a CSA assessment based on the Child Support Formula.** It is available to all people who collect their maintenance income privately, as well as those who have asked the CSA to collect maintenance on their behalf.
- The estimated amount of maintenance is annualised for the purposes of applying the Maintenance Income Test. The resident parent will receive the same amount of FTB Part A each fortnight, regardless of the amount of maintenance that they actually receive in each fortnight.
- Where the amount of the maintenance to be paid by a non-resident parent changes during the relevant period, the amount of maintenance is reassessed and applied for the remainder of the income year, or until the end of the relevant period,

whichever occurs first.

- At the end of the financial year, Centrelink checks how much maintenance the resident parent actually received, and whether they received the correct amount of FTB Part A. Where a resident parent received more FTB Part A than they were entitled to, they will have to repay the excess. Where a person received less FTB Part A than they were entitled to, they should receive the extra FTB Part A to which they were entitled.
- Where maintenance is being collected privately rather than by the CSA, the reassessment similarly takes place after the end of the income year based on changes in the maintenance assessment throughout the income year.
- Caution must be taken where a resident parent, who collects their maintenance privately, advises Centrelink that the amount received was substantially less than the assessed liability. This is because, if the resident parent did not collect all of the maintenance to which they were entitled, they may not have satisfied the “maintenance action test”. This test requires the resident parent to take “reasonable action” to obtain maintenance in order to receive more than the minimum rate of FTB Part A (see section 3).
- The entitlement method may be the best method for a person who is reasonably confident that they will regularly receive their full maintenance entitlement. It would not be an appropriate assessment method for a person who is constantly being underpaid their regular maintenance, as it could result in a resident parent experiencing unnecessary hardship throughout the year until the end of year reconciliation process.

### **The disbursement method**

- **This method assesses a person’s rate of FTB Part A based on the amount of maintenance actually paid to the CSA each month.** This method is only available to resident parents who have arranged for the CSA to collect their maintenance on their behalf. This means that their FTB rate can change every month. Where the actual amount of maintenance a resident parent is receiving changes from their original estimate, Centrelink will recalculate the estimate of maintenance for the financial year. The new estimate is worked out by adding the amount of maintenance the resident parent has already received during the income year to the amount projected for the rest of the relevant period.
- The actual assessment method should reduce the risk of the resident parent incurring a large debt at the end of the year, if they receive additional maintenance throughout the year. Centrelink will still reconcile the FTB Part A entitlement with the amount received at the end of the year to determine if there has been an underpayment or an overpayment of FTB Part A.
- A resident parent must specifically request Centrelink to use the “disbursement method”, otherwise the “entitlement method” will be used by default. The “disbursement method” is not able to be used by a person who has a private maintenance arrangement, as maintenance is not paid through the CSA in such cases.

**The modified entitlement method**

- **This method assesses a person’s FTB Part A rate by using an estimated maintenance income amount which is obtained by applying whichever is the higher of the entitlement method or the disbursement method.** The estimated maintenance income amount is revised by Centrelink when a person’s child support entitlement increases part way through the year.
- The “modified entitlement method” applies only where:
  - maintenance is being collected by the CSA; and
  - entitlement to FTB is being assessed under the “entitlement method”.
- The “modified entitlement method” will not apply to a person who has elected to be assessed under the “disbursement method”.
- Under the “modified entitlement method” a person’s rate of FTB Part A is based on the higher estimate from the two other assessment methods. This reduces the risk of an overpayment occurring.

**4.4 Child Support Agreements and “notional assessments” of maintenance**

- This section explains how child maintenance is assessed in situations where parents have a court order or agreement in place. For information on the assessment of maintenance where there is no court order or agreement, see 4.3.
- A Child Support Agency (CSA) “notional assessment” is the amount of child support that would be payable if there were no agreement or court order in place. The CSA works out a notional assessment amount using its Child Support Formula. In most cases, the notional assessment amount is then used to calculate the rate of FTB Part A under the Maintenance Income Test (see 4.6).

**Privately collected agreements**

- Where the child support specified in an agreement is collected privately and not through the CSA, the notional assessment amount will be used to calculate the receiving parent’s entitlement to FTB Part A. The notional assessment will always be used, rather than the amount provided for in the agreement.
- For example, separated parents may register a binding child support agreement for \$4,000 per year, whereas the notional assessment for those parents is \$5,000 per year. In this case the rate of FTB Part A will be based on the higher notional assessment amount of \$5,000 per year, even though the non-resident parent will receive less than the notional assessment amount according to the agreement,

**CSA collect**

- Like child support agreements and court orders that are collected privately, the notional assessment amount is used where the child support is collected by the CSA. However, in CSA collect cases a different approach is taken where less than the agreement amount is collected. Where less than the agreed amount is collected by the CSA a percentage of the notional assessment amount that is equivalent to the percentage of the agreement amount that was received is applied.

- For example, two separated parents have a child support agreement of \$4,000 per year. The notional assessment amount, however, is \$3,000. The CSA collects \$2,000 in child support payments. That is, it collects 50% of the agreed amount. The amount of maintenance that will be used to calculate the rate of FTB Part A will therefore be 50% of the notional assessment amount of \$3,000, rather than the amount actually received. This means that the amount of \$1,500 will be used.
- Where more than the notional amount is collected, it will be applied to any arrears of maintenance, but will not reduce the person's rate of FTB Part A.
- Agreements made before 1 July 2008 that continue in force
- Where the CSA reviews a person's pre 1 July 2008 agreement and accepts that the agreement continues, the person's FTB Part A will continue to be worked out using the actual amount of child support received under the agreement.

#### **4.5 Lump sum agreements**

- From 1 July 2008, binding child support agreements and court orders can provide for some or all of the child support to be paid as a lump sum. Lump sum payments include transfers of assets. Where child support is paid by a lump sum, the CSA will credit the lump sum against the amount of child support payable under the notional assessment. This will continue until the lump sum is reduced to zero.
- For example, two separated parents have a binding child support agreement which states that \$20,000 is to be transferred to the resident parent. The non-resident parent's child support liability for the next financial year according to the notional assessment is \$5,000. The notional assessment amount of \$5,000 will be used in the application of the maintenance income test for the next financial year. The remaining amount of the lump sum will be credited towards future child support payments in the ensuing financial years.

#### **4.6 The Maintenance Income Test**

- Maintenance income, whether paid for the upkeep of a child or an ex-partner, can reduce a resident parent's rate of FTB Part A. A person receiving maintenance income must first calculate their maximum rate of FTB Part A under the ordinary income test (see **Chapter 32**, section 7) and then apply the Maintenance Income Test (see 6 in Table 32.1). The Maintenance Income Test cannot reduce a person's rate of FTB Part A below the minimum rate.
- It is important to note that child support income received by a resident parent for one or more children of a non-resident parent would reduce their amount of FTB Part A **for those children only**. This means that **any child support paid by a non-resident parent reduces the FTB Part A paid in respect of their children only**.
- For example, a non-resident parent pays child support for their child, who is in the care of its other parent. The other parent also has the care of a second child from a current relationship. The child support received for the first child only reduces the FTB Part A paid in respect of that child. It cannot reduce the amount of FTB Part A paid in respect of the second child, for whom no child support is paid.
- Where both members of a couple receive maintenance income, that income is

- added together before applying the Maintenance Income Test to assess the family’s FTB Part A entitlement.
- Maintenance paid for a non-dependent child or to cover the costs associated with a child’s disability or learning difficulty is exempt from the Maintenance Income Test (see 3.7).
- The Maintenance Income Test applies to all maintenance, whether paid through the CSA or by private arrangement. It should be noted that the Maintenance Income Test is worked out on an annual basis. Annualised rates of child support are used.
- The Maintenance Income Test is firstly applied to each child in respect of whom the person is receiving FTB. The child support paid in respect of each child is used to work out the FTB Part A that can be paid in respect of that child. The person then receives the sum of the FTB Part A rates paid in respect of each child.
- FTB Part A is not affected by maintenance income until the assessable maintenance income is over the Maintenance Income Test “free area” – see Table 35.1. Maintenance income above this amount will reduce the rate of Family Tax Benefit paid in respect of a child by 50 cents for each \$1 until the minimum rate of Family Tax Benefit is reached. See Table 35.1 for details of the Maintenance Income Test and the “free area”.

<b>Person's family situation</b>	<b>Basic "free area" per year</b>	<b>Increase in "free area" for each additional child</b>
Not a member of a couple	\$1,292.10	\$430.70
Partnered (both have maintenance income)	\$2,584.20	\$430.70
Partnered (only one has maintenance income)	\$1,292.10	\$430.70

**4.7 Maintenance income credit balance**

- From the 2006/2007 financial year, a person can have the benefit of a “maintenance income credit” balance that will enable the person to access their unused maintenance income free areas from previous years to offset late child support payments. In effect, the maintenance income credit balance will first be available to a person from the time their 2006/2007 Family Tax Benefit is reconciled after July 2007.
- The earliest date for accruing a maintenance income credit balance is 1 July 2000 or the day the person or their partner became eligible for Family Tax Benefit (whichever is later). This means that in some cases the amount of a person’s maintenance income free area not used up in a year may accumulate to offset maintenance received in later years.
- In order to be able to use a maintenance income credit balance a person must be qualified for Family Tax Benefit, or be the partner of a person who is eligible for

Family Tax Benefit. Further, the maintenance agreement must either be registered for collection by the Child Support Agency, be based on a court order or be a maintenance agreement registered with a court. This means that people with private-collect agreements may not be able to accrue a maintenance income credit balance. Finally, a person cannot use their maintenance income credit balance for a particular year until their Family Tax Benefit entitlement has been reconciled by Centrelink. In some cases this may not happen until after the person and their partner have lodged their income tax returns (see **Chapter 32**, 5.6).

#### **4.8 Exceptions to the Maintenance Income Test: Disability Expenses Maintenance**

- Disability Expenses Maintenance is exempt from the Maintenance Income Test. Any maintenance, which is provided for expenses incurred in respect of a child's disability or learning difficulty, is not assessed as income under the Maintenance Income Test *or* the ordinary income test. This includes non-cash or capitalised maintenance, whether collected privately or through the CSA. Disability Expenses Maintenance may include things like special school fees, medical expenses or the hire or purchase of special equipment.
- For people who receive maintenance through the CSA, if the maintenance being received is:
  - equal to the amount determined by the Child Support Formula, then none of the maintenance is treated as Disability Expenses Maintenance;
  - greater than the formula amount because of the disability, the extra amount will be exempt. This includes a situation where there has been a departure by the CSA (eg by the Child Support Review Officer or a court) from the formula amount due to the special needs of the child. The CSA will usually provide written reasons for any departure from the formula and will set out how much (if any) is due to the child's special needs.

#### **4.9 Changes in maintenance income**

- Increases in maintenance income must be notified to Centrelink within 14 days of the increase. Where the payments are being made through the CSA, the CSA will advise Centrelink of the change in the rate of maintenance. However, as the CSA and Centrelink still act as separate agencies, where a person has a change of circumstances (eg change of address, work or income), it is advisable that both the CSA and Centrelink be advised of the change, in order to avoid misunderstandings between the two agencies.

#### **4.10 Arrears payments**

- In some cases, a person will receive arrears of maintenance they had missed out on in the past. Any maintenance income that is received during the income year is assessed for that year, regardless of the period of time to which it relates. This means that an arrears payment is assessed when it is received, even if it relates to a previous income year.

## 4.11 Maintenance Income Reconciliation

- Maintenance Income Reconciliation occurs at the end of each income year. Reconciliation is the process by which Centrelink works out how much Family Tax Benefit A and/or Child Care Benefit a person should have been paid during the relevant income year. This generally involves comparing the FTB and/or Child Care Benefit they were paid, based on both the estimates of ordinary income and maintenance income provided during the income year, with the actual amount to which they were entitled. This final entitlement amount is worked out using the person's:
  - actual adjusted taxable income (provided in part by the ATO);
  - actual maintenance income; and
  - for the purposes of Child Care Benefit, statements of Child Care Usage submitted by approved services. These are usually statements from a child care centre showing details of, amongst other things, the type of care provided, the hours it was provided and the total fee for the care provided.
- As part of the reconciliation process at the end of each income year, the estimated amount of maintenance used to assess entitlement to Family Tax Benefit A is reconciled with (ie compared with) the actual amount of maintenance received during that income year. This can result in a recalculation of a person's entitlement to Family Tax Benefit A.
- Where a person is privately collecting maintenance and has received less than 100% of the maintenance agreed upon in the maintenance agreement during the income year, their Family Tax Benefit A entitlement may be recalculated at this point to be at the minimum rate only. This may be done on the basis that they have failed the "reasonable action test" (see 2.6).

## 5 Effect of child maintenance on Social Security payments

### 5.1 Youth Allowance parental means test

- As explained in 3.1 above, maintenance income is not assessed as income under the ordinary income tests for Social Security payments. See **Chapter 39** for an overview of the ordinary income tests. Maintenance paid for the financial support of a child does not affect the rate of any Social Security payment other than Youth Allowance. Child maintenance may affect a person's Youth Allowance entitlements through the operation of the parental means test that applies to Youth Allowance- see **Chapter 15**.

### 5.2 Collection of maintenance from Social Security recipients

- Since July 1999, all non-resident parents are required, by law, to pay a minimum amount of maintenance. This includes non-resident parents in receipt of Social Security payments.

- From 1 July 2008, the minimum child support that must be paid is \$339 per year. This minimum liability can be administered through the Child Support Agency (CSA). The CSA can send a notice to Centrelink requiring that the maintenance be deducted directly from a person's Social Security payment and that the money be transferred to the CSA for payment to the resident parent.
- Variations to the minimum rate and exceptions from the requirement to pay the minimum rate may apply in some cases.
- To have the deduction stopped, a non-resident parent must be in financial hardship. They may ask that the deduction be *suspended*. To do this, a person must approach the CSA, *not* Centrelink.

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## 6. Hints about handling problems

### 6.1 Whether to seek maintenance

- It is often necessary to give advice and support to clients who need to seek maintenance. Some people may need reassurance that use of the CSA will not mean that they have to contact their former partner themselves or reveal their address to him or her. They may need advice in relation to a range of issues arising from the birth of a child. They may also need to be shown detailed calculations showing whether they will be better off financially by seeking maintenance, even though their Family Tax Benefit A may be reduced. **In most cases a person is better off financially if they do obtain maintenance.**
- On the other hand, **it is essential not to put undue pressure on people to seek maintenance.** In many cases they may have a reason for not doing so, but may be reluctant to disclose it to you or the authorities. It is very important to take enough time and care to find out whether they may be exempted from the requirement to seek maintenance. This applies especially where violence, rape, incest or harassment may be involved, or where there are concerns in relation to child protection.
- **If your client has strong objections to seeking maintenance,** it may be helpful for you to contact Centrelink yourself in order to help explain the circumstances. You may need to help your client resist any excessive pressure from Centrelink to seek maintenance. Suitable people to contact within Centrelink are the social worker or the office manager. If you are persistent, Centrelink usually takes a reasonable approach, and may give your client more time to decide what to do.
- The CSA and Centrelink still act as separate agencies so where a person has a change of circumstances (eg change of address, work or income) both the CSA and Centrelink must be informed.

### 6.2 Applying for maintenance

- Applications for maintenance to the CSA should be made over the telephone. Supporting documentation, such as birth certificates, can be forwarded to the CSA immediately after the telephone registration has been completed. A person should contact the CSA directly.

### 6.3 Appeals

- > Appealing against Centrelink decisions
- > Appeals against cancellation of Family Tax Benefit A because of failure to seek maintenance should be lodged promptly. For information on the procedure and time limits for making appeals, see **Chapter 3**, 4.6, **Chapter 48** (Authorised Review Officer), **Chapter 49** (Social Security Appeals Tribunal) and / or **Chapter 50** (Administrative Appeals Tribunal). Centrelink can decide that payments will continue until the review or appeal is finalised, although the decision to continue payments is discretionary. In most cases, however, payments should be continued. The decision to continue a person's payment pending review can be made by an Authorised Review Officer see **Chapter 48**.
- > Appealing against CSA decisions
- > A person should contact a Community Legal Centre, Legal Aid Commission of the CSA directly for information about how to appeal against CSA decisions.

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## 7. Useful links and resources

- > To access these useful Factsheets, booklets and forms, go to National Welfare Rights Network website at: [www.welfarerights.org.au](http://www.welfarerights.org.au) or , in the ONLINE version, click on the relevant link.

### 7.1 Factsheets

- Your Social Security rights
- Appeals – how to appeal against a Centrelink decision
- Freedom of Information – how to request a copy of your file from Centrelink
- Other Factsheets

### 7.2 Forms

- Request for a review by an Authorised Review Officer form
- Request for documents under Freedom of Information form
- Other forms

### 7.3 Self-advocacy booklets

- Social Security Appeals Tribunal
- Administrative Appeals Tribunal

