

Going to the Administrative Appeals Tribunal



CHILD SUPPORT FACTSHEET 5

If you disagree with a decision about your child support case, you might be able to appeal to the Administrative Appeals Tribunal (AAT). The AAT can review certain decisions made by Services Australia: Child Support. The Child Support Service of Legal Aid NSW can give you advice about the AAT and how to appeal. This factsheet explains the steps you can take. If you are unsure about any of these steps, please contact us to make an appointment.

What Child Support decisions can the AAT review?

The AAT can review a decision that Services Australia: Child Support 'Child Support' makes about an objection. An objection is where you or the other parent in your child support case request that Child Support reconsider a decision. Once Child Support makes a decision on the objection, it must write to both parents to tell them if it has changed the original decision. If either parent disagrees with Child Support's decision on the objection, they have 28 days to appeal to the AAT.

How do I lodge an appeal?

It does not cost anything to appeal to the AAT about a child support decision.

The AAT's website www.aat.gov.au has an appeal form that you can complete and lodge online. If you prefer, you can print out an appeal form to complete and post or deliver to the AAT.

You can also lodge your appeal with the AAT by telephone on **1800 228 333** or in person at an AAT registry. You can find the location of the AAT's registries on its website.

What if it is over 28 days since Child Support's decision?

You can apply to the AAT for an extension of time at the same time as lodging your appeal. If you do this, you must apply in writing and explain why you are lodging your appeal more than 28 days after Child Support advised you of the decision. The appeal is placed on hold until a decision is made about granting the extension of time.

If the AAT refuses to grant you an extension of time, you can appeal the refusal. These appeals are also made to the AAT and must be lodged within 28 days of the AAT's decision to refuse your extension of time application.

What happens when the AAT receives my appeal?

You will receive a letter from an AAT case manager providing you with information about the AAT process. A letter will also be sent to the other parent to notify them of your appeal.

Child Support is also notified of your appeal and must provide a copy of its decision and other relevant documents to the AAT and to each parent. The AAT will then arrange a date for the hearing.

What if the other parent has appealed to the AAT?

If the other parent appeals to the AAT, the AAT will write to you and give you the opportunity to participate by providing evidence and attending the hearing.

It is important for you to be involved so that the AAT can hear your side of the story. If you choose not to participate you may lose your right to appeal against the AAT's decision, once it is made.

Providing evidence to the AAT

You and the other parent can send documents to the AAT up to 14 days before the hearing. In some cases, the AAT will have a directions hearing and direct each parent to provide particular documents by a specified date. It is important you send any documents that will support your case and any documents you are directed to provide within those time frames. If you don't, the member might decide not to look at those documents. Alternatively, the member might remove you as a party from the appeal which means that they will make its decision without hearing from you.

Copies of these documents will be sent to the other parent. You should receive copies of any documents the other parent sends to the AAT.

What should I do to prepare for the hearing?

Child Support will send you, the other parent and the AAT a copy of the objection decision and the documents it considered before it made the decision. Each of the pages in the bundle of documents will be numbered to make it easier to refer to them during the hearing.

It is important that you read those documents so that you understand why Child Support made the decision and can explain to the member why you think it is wrong. It is helpful to write down a list of the issues you want to raise with the member and note the page number so that you can refer to it during the hearing.

The AAT will number any new documents and send copies out to each of you. It is important that you read the other parent's documents carefully so that you can point out anything that is wrong and respond to the issues the parent wants to raise with the member. Again, it is a good idea to make a list of those matters and be ready to refer to the page number during the hearing.

It is very important to take all the documents with you and have them with you for a telephone hearing. This includes the Child Support documents and the numbered documents from you and the other parent provided by the AAT.

If you have a telephone hearing, make sure you are in a quiet private space where you can refer to your papers. Have a pen and paper with you to make notes during the hearing.

You must tell the AAT in writing 14 days before the hearing if you want to have a witness at the hearing. You must also tell the AAT what they will give evidence about. The AAT will advise Child Support and the other parent and the member will decide whether to take evidence at the hearing.

The Tribunal will issue an order that both parents do not disclose to anyone other than a lawyer any new information about the other parent they obtain from those documents or at the hearing.

What happens at the hearing?

The hearing will be either by telephone or in person and the AAT will usually grant a request to have the hearing by telephone. You should also tell the AAT if there is an ADVO so that it can take this into account when it organises the hearing.

Tell the AAT as soon as possible if you cannot attend the hearing. If you do not attend the hearing without a good reason, the AAT might make a decision in your absence. If you are the applicant, it might dismiss the application without considering any evidence.

The hearing will not be as formal as a court hearing. However, it is more formal than talking to Child Support. You and the other parent must attend the hearing at the same time and give evidence under oath or affirmation. The AAT does not usually allow any other person to attend to help you, except a legal adviser or an interpreter.

At the beginning of the hearing, the member will explain the procedure to be followed so that each of you have an opportunity to explain your point of view. Usually, the member will ask each of you questions starting with the parent who made the application. After those questions and answers, the member will usually give you an opportunity to say anything else and to respond to anything relevant said by the other parent.

The member might also make some rules to ensure that both of you can do give your evidence without interruption. Generally, this will mean that the parents may speak only at the time allowed by the member and that they are to speak only to the member and not to the other parent. This means you cannot ask the other parent questions. However, you can ask the member to ask them a question and the member will decide whether asking that question will help them to make their decision.

The member will decide whether to hear evidence from a witness. Any witness must give evidence under oath or affirmation and will not attend the hearing before or after giving their evidence. The member will ask questions of the witness and either parent can suggest that they ask a particular question.

The non-disclosure order also applies to information either parent obtains during the hearing.

The AAT can require third parties to attend the hearing or produce documents if necessary for making its decision. The proceedings can also be adjourned for this purpose.

Can a lawyer represent me?

You may have a legal representative or support person assist you at the AAT but the AAT must approve this **at least 21 days before** the hearing. You will usually have to answer questions even if you have a lawyer at the hearing.

How will the AAT make its decision?

The AAT has the same decision-making powers as the original Child Support decision maker. In making the decision, the AAT must consider the available information and apply the relevant child support legislation. It may decide to do any of the following:

- Confirm the original Child Support decision.
- Vary the original decision.

- Set aside the original decision and replace it with a new decision.
- Set aside the original decision and send the matter back to Child Support to reconsider.

The AAT usually makes its decision soon after the hearing and sends a notice of decision with its reasons to you within 14 days. However, the member might take longer to consider the evidence or there might be some other reason for delay. In some cases, the AAT adjourns the hearing to allow a parent to provide further evidence and it will advise you if it decides to reconvene the hearing for that reason.

It might also adjourn the hearing, for a number of reasons – for example to allow a parent to provide further evidence. The AAT will usually reconvene the hearing in that case to give the other parent an opportunity to respond to that evidence.

The AAT will send a copy of its decision to you, the other parent and Child Support. If it varies or sets aside the decision, Child Support will amend the child support assessment as soon as possible and notify you of the changes it has made.

What can I do if I'm not happy with the AAT decision?

There are two appeal paths available if you do not agree with the AAT's decision. The AAT will notify you which options applies in your case.

Option 1: AAT decisions about the percentage of care of a child

If the AAT decision relates to how much care you (or the other parent) have of the children, you can make a further appeal to the AAT (this is called an AAT second review).

An application for an AAT second review must be lodged with the AAT within 28 days.

You should check with the AAT to find out whether a fee applies for an AAT second review.

Option 2: AAT decisions on all other child support matters

For all other child support matters, once the AAT has made a decision, there is no second review. You have a right of appeal to court (usually the [Federal Circuit and Family Court of Australia](#) (FCFCOA)). However, your appeal can only be made on a question of law, not a dispute about the facts. You must file a Notice of Appeal with the court within 28 days from when you receive the AAT decision.

It is often difficult to work out what a question of law is and it is important that you obtain legal advice if you are considering appealing to a court about an AAT decision. General information about the process of an appeal is available on the FCFCOA website www.fcfoa.gov.au.

Is legal aid available for AAT matters?

A person who is applying or responding to an AAT appeal can apply to Legal Aid NSW for legal aid (whether they are the paying parent or the receiving parent). To qualify, the applicant for legal aid must satisfy a means and merit test and show that he or she is unable to adequately represent themselves before the AAT.

For more information and help

Legal Aid NSW Child Support Service

02 9633 9916 (Sydney and metropolitan areas) **1800 451 784** (outside Sydney).
Free, independent, confidential advice about child support issues.

LawAccess NSW

1300 888 529 Legal assistance and referrals over the phone including assistance with applying for legal aid.

Domestic Violence Unit

1800 979 529 A dedicated statewide service of Legal Aid NSW bringing together specialist domestic violence lawyers, social workers and financial counsellors.

Child Support Service, Legal Aid NSW

Level 4, 128 Marsden Street,
Parramatta NSW 2150

PO Box 165, Parramatta NSW 2124

Ph: **(02) 9633 9916** (Sydney and metropolitan areas) or

Toll free **1800 451 784** (outside Sydney)

Fax: (02) 9219 5559

Email: admin.css@legalaid.nsw.gov.au

There are five factsheets in this series:

- **Child Support Factsheet 1:**
Taking action to get child support
- **Child Support Factsheet 2:**
Taking action to dispute paternity
- **Child Support Factsheet 3:**
Applying to court for a change of assessment
- **Child Support Factsheet 4:**
Applying to court for a stay order
- **Child Support Factsheet 5:**
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This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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For more information about Legal Aid NSW services:



Do you need help to contact us?

If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.



Do you find it hard to hear or speak?

If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit:

www.relayservice.gov.au