

# The Child Support Agency and Parentage (Part Two)

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Part One of this article (*Balance*, October 2002) explained how the Child Support Agency (CSA) decides who is a liable parent. This part looks at how CSA looks at situations where there is a dispute about parentage.

## Conflicting evidence

Applications may be accepted on the applicant's uncontested statements about cohabitation dates that satisfy CSA. Efforts are always made to contact the liable parent in a new application, but are not always successful. Because the test was satisfied through a valid presumption of parentage, CSA must accept the application and register the case.

At any time, the liable parent may supply information that conflicts with the evidence that satisfied the test of parentage. Usually this will not invalidate a presumption. For example, if the liable parent provided a DNA test result indicating that he was not the father of the child, a presumption based on cohabitation would remain valid. DNA test results are not a valid presumption of parentage. Only a court may make a finding based on such evidence.

Later evidence from the prospective liable parent can establish that the cohabitation could not have occurred on the dates claimed. Where there is a presumption and evidence exists which invalidates it, there may be a reason to refuse the application if CSA finds the evidence to be more likely than the presumption. If the application has been accepted, the liable parent may object. CSA will determine the objection on the factual evidence available. Where the evidence is strong, it is possible that CSA will act to deregister the case. Otherwise, where evidence is contentious, it is likely that the assessment will stand, and it would be a matter for the court to decide.

## Options after an application has been refused

CSA must refuse to register an application where the Registrar is not satisfied that the person from whom child support is sought is a liable

parent. In these circumstances the applicant may object to the decision made by CSA. The applicant can ensure that all relevant information was considered by CSA and to present any facts not available with the original application or incorrectly recorded by CSA. It means that any administrative issues can be reconsidered without the applicant going to court.

If the objection is refused so that the Registrar will not accept the application for an assessment, the applicant can apply for a declaration from a court that they are entitled to an administrative assessment of child support from the other person because that other person is a parent of the child (section 106). Such a declaration can be obtained from a court with jurisdiction under the *Family Law Act 1975*. The proper respondent is the person identified as the other parent of the child.

Generally, the court will make orders for DNA testing to be carried out to enable it to make a finding of parentage. If satisfied on the issue, the court will make the necessary declaration and CSA will accept the application as of the day the application was originally made.

The liable parent who disputes parentage after the assessment is made

Where CSA accepts an application that is properly made with regard to the liable parent, the payer may apply directly to a court for a declaration that the carer is not entitled to an administrative assessment of child support (section 107). There is no requirement to object to the making of the assessment if the person named as the liable parent contends that they are not the parent. In such an application in Form 63 under the *Family Law Rules 1984*, the only respondent is the person entitled to

child support under the assessment. Again, the court is likely to order DNA testing where parentage is in dispute, as any declaration will depend on a finding of parentage. Where satisfied that the applicant is not a parent of the child, the court will usually make the declaration that the respondent payee is not a person who is entitled to an administrative assessment of child support against that person. The effect of such a declaration is that the application is taken never to have been accepted by CSA (subsection 107(5)).

When a paying parent applies for a declaration that the carer parent is not

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## LEGAL PRACTICE LONG ESTABLISHED

- Deceased estate
- General practice on southside of Brisbane
- Same location for eight years
- Suit one or two practitioners
- Currently holds more than 700 will files
- Average gross earnings past five years \$150,000
- Sale includes library and office equipment
- Long serving office staff will stay on
- Full financials available
- Price negotiable

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