



The previous scheme **Guide**



Australian Government
Child Support Agency

CSA's previous law & policy guide
Effective until 30 June 2008

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4.3.7: The Administrative Decisions (Judicial Review) Act 1977

Context

A person aggrieved by certain administrative decision made under Commonwealth legislation can apply to the Federal Court, or Federal Magistrates Court for a review of that decision.

Legislative references

[Administrative Decisions \(Judicial Review\) Act 1977](#)

Explanation

The AD(JR) Act allows a parent to apply to the Federal Court or the Federal Magistrates Court for judicial review of most of CSA's administrative decisions. The AD(JR) Act applies to all CSA decisions under the Registration and Collection Act and all Assessment Act decisions except for those made under Part 6A of the Assessment Act (i.e. decisions on a parent's application to change a child support assessment or on a Registrar-initiated change of assessment). (See [chapter 2.6](#))

The Federal Court or Federal Magistrate's court can transfer the proceedings in relation to CSA's decisions to the Family Court if it believes it is appropriate.

Parties to the application

CSA is the respondent to a parent's application for review under the AD (JR) Act. The court can decide to join the other parent to the proceedings if it believes this is appropriate.

The court's review

The AD(JR) Act provides that the court will review a decision by considering whether the decision-maker has properly made that decision according to law. The court cannot review the merits of the decision, by considering whether the decision was the best exercise of the decision-maker's discretion.

Decision-making according to the law

The court can conclude that a decision was not made according to law if satisfied that any of the following circumstances apply (section 5 AD (JR) Act).

- The decision was made in a way that was not procedurally fair, e.g. the decision-maker failed to provide either parent with an opportunity to comment on the information that was taken into account in a way that is adverse to them; or if the decision-maker was biased.
- The decision-maker did not follow procedures that were required by law when they made the decision.
- The person who purported to make the decision did not have the power to make the decision.
- The decision could not be made under the relevant legislation.
- The decision-maker used the decision-making power in an improper way and not for the purpose intended by the relevant legislation.
- The decision-maker made a mistake about the law that applied to the facts of the case.
- The decision was made or affected by fraud.
- There was no evidence or other material to justify the decision.
- The decision was otherwise contrary to law.

Using a decision-making power in an improper way

A decision-maker will use their power in an improper way if they

- take something into account that was not relevant to the decision;
- fail to consider something that was relevant to their decision;
- make the decision for a different purpose than the one conferred by the legislation;
- make a decision involving discretion in bad faith;

- make a decision involving discretion at the direction or request of another person,
- make a decision according to a policy without taking into account the circumstances of the case;
- make a decision that no reasonable person could have made;
- make a decision that leads to an uncertain outcome;
- abuse their power in some other way.

No evidence to support a decision

A decision will have no evidence to support it if

- the decision-maker could only make that decision if a particular matter is established and there is no material from which they could reasonably be satisfied that the matter is established; or
- the decision-maker based the decision on a particular finding of fact and that finding was wrong.

The court's power to change a decision

The court can set aside the original decision, in whole or in part, if it is satisfied that the decision was not made according to law. The court cannot replace the decision with a preferable decision. If the court sets CSA's original decision aside, it will return the matter to CSA for it to make a new decision, subject to directions, if appropriate.

Effect of application on the original decision

CSA's decision continues to have effect after a parent makes an application under the AD(JR) until the court makes a decision on that application. CSA or the other parent may take action to enforce the decision unless the court issues a stay order in relation to that decision.

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