



SSAT Child Support Review General Directions 2012

Child Support (Registration and Collection) Act 1988

I, Jane Macdonnell, Principal Member, Social Security Appeals Tribunal, revoke the Directions made on 8 April 2009 by the Executive Director, Social Security Appeals Tribunal, and make these Directions under paragraph 103ZA(1)(a) of the *Child Support (Registration and Collection) Act 1988*.

Dated 10 December 2012

Jane Macdonnell
Principal Member, Social Security Appeals Tribunal

Division 1 Preliminary

1 Name of Directions

These Directions are the SSAT Child Support Review General Directions 2012.

2 Commencement

(1) These Directions commence on the day after the commencement of Schedule 3 of the *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012*.

(2) The Directions made on 8 April 2009 are revoked upon the commencement of these Directions.

3 Definitions

In these Directions:

Act means the *Child Support (Registration and Collection) Act 1988*.

Auscript means Auscript Australasia Pty Limited.

child means a person under the age of 18 years who is not a party.

Deputy Principal Member means a person referred to in paragraph 1(aa) of Schedule 3 to the *Social Security (Administration) Act 1999*.

family violence order means an order (including an interim order) made under a law of a State or Territory prescribed under the *Family Law Regulations 1984* to protect a person from family violence.

hearing means the hearing of a review.

lawyer means a person who has been admitted to practise law in an Australian jurisdiction and who holds a current practising certificate.

NAATI means the National Accreditation Authority for Translators and Interpreters Ltd.

party means a person or persons listed in subsection 101(1) of the Act, other than the Registrar.

personal information means information or an opinion about an individual whose identity is apparent from the information or opinion.

presiding member means the member constituting the SSAT for the review, or the member designated as the presiding member if more than one member constitutes the SSAT for the review.

Principal Member means the SSAT Principal Member as defined in subsection 4(1) of the Act.

protected information means information that concerns a person and is disclosed to or obtained by another person in the course of, or because of, the other person's duties under or in relation to the Act.

Registrar means the Child Support Registrar.

registry means an office of the SSAT.

representative means a person to whom the Principal Member has granted permission, under subsection 103C(2) of the Act, to make submissions to the SSAT.

review means a review of a decision by the SSAT under Part VIIA of the Act.

Senior Member means a person referred to in paragraph 1(b) of Schedule 3 to the *Social Security (Administration) Act 1999*.

SSAT means the Social Security Appeals Tribunal and, where appropriate, includes staff.

4 Application of these Directions

These Directions apply to a review by the SSAT.

Note: Subsection 103ZA (4) of the Act allows the presiding member to give directions as to the procedure to be followed on the hearing of the review. Subsection 103ZA (5) of the Act stipulates that a direction under subsection (4) must not be inconsistent with, among other things, these Directions.

Division 2 Extension of time

5 Application for extension of time

- (1) The SSAT must not register an extension application which does not state in writing the reasons for failure to apply for the review within the time prescribed by section 90 of the Act.
- (2) Submissions and a copy of any other document which the applicant wishes the Principal Member to take into account in deciding the extension application must be included with the extension application.
- (3) The SSAT must request the Registrar to send the Principal Member:
 - (a) the statement described in paragraph 95(3)(a) of the Act; and
 - (b) a copy of any correspondence and any record of oral communication between the applicant for the extension of time and the Registrar after the Registrar served notice on that person of the decision of which review is sought by the SSAT.
- (4) Notice of the extension application is not to be given by the registry to any other person.
- (5) The extension application is to be decided, by a delegate of the Principal Member, on the papers unless it would be inconsistent with subsection 88(2) of the Act to do so in a particular case.

Division 3 Application for review

6 Availability of form

- (1) A person wishing to make a written application for review should use the form which can be printed from the SSAT's internet site www.ssat.gov.au.
- (2) A written application may be made to the SSAT by electronic means.

Note: Email addresses for offices of the SSAT are available on the SSAT's internet site. Subsection 7(2) of these Directions prohibits the registration of an application for review which does not contain certain details.

7 Details required for application

- (1) The SSAT must ask for and record the following details from a person making an oral application for review:
 - (a) the name of the applicant;
 - (b) the residential address of the applicant;
 - (c) the postal address of the applicant (if different from his or her residential address);

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- (d) the telephone number on which the applicant can be contacted during the business hours of the SSAT;
 - (e) the decision of the Registrar of which review is sought;
 - (f) the date of the decision of the Registrar of which review is sought; and
 - (g) the date on which the person received the decision of the Registrar.
- (2) The SSAT must not register a written or oral application for review without all of the details listed in paragraphs (1)(a) to (f).
- (3) If an extension application is necessary, the application for review cannot be registered unless the extension of time has been granted.
- (4) Where an extension of time is not necessary, the SSAT must ask the person making an oral application any other questions on the application for review form, and record the answers.

8 Requirements for valid application

- (1) Subject to subsection (2), the SSAT must refuse to register an application for review made by a person who is not listed in an item in the table in subsection 89(1) of the Act.
- (2) A person seeking to make an application for review on behalf of a person listed in an item in the table in subsection 89(1) of the Act must satisfy the SSAT that he or she is:
- (a) a lawyer instructed by a person so listed to make the application; or
 - (b) the holder of a power of attorney authorising the commencement of legal proceedings; or
 - (c) the appointed guardian of the person who lacks legal capacity; or
 - (d) the executor or administrator of the deceased estate of the person.
- (3) A person making an application for review in the circumstances listed in paragraphs (2)(b) to (d) is a party for the purposes of these Directions.

9 Non-disclosure order to party

At the earliest opportunity, the SSAT must send a party the orders made by the Principal Member under subsection 103ZAA(1) of the Act.

Division 4 Documents to be given to the SSAT

10 Documents for hearing

(1) A party must give the SSAT the evidence and information specified in any directions given under paragraph 103ZA(1)(b), subsection 103(2) or subsection 103ZA(4) of the Act by the date specified in those directions.

(2) Unless the presiding member directs otherwise, a party may obliterate the following information from a document which the party gives to the SSAT:

- (a) a tax file number or passport number;
- (b) the party's Centrelink client reference number or Child Support identification number;
- (c) the number of the account on a bank statement (but not the numbers of any account to or from which money is transferred in the bank statement) other than the last four digits in that account number.

(3) A party must not obliterate any other information in a document which a party gives to the SSAT without the permission of the presiding member.

(4) A party must give the SSAT any written submissions by the date specified in any directions given to the party.

(5) If a party has not been directed to give the SSAT evidence, information or written submissions by a specified date, any document on which the party intends to rely at the hearing must be given to the SSAT at least:

- (a) 14 days before the hearing where no party resides outside Australia;
- (b) 28 days before the hearing where a party resides overseas.

(6) The Registrar must give the SSAT any written submissions, made under subsection 103F(1) of the Act, in the timeframes specified in subsection 5.

(7) The Registrar must give the SSAT any written submissions, made under subsections 103F(3) or 103F(4) of the Act, by the date specified in the grant of the request or the order.

(8) A document which is not given to the SSAT in accordance with subsections (1) to (7) will only be considered with the permission of the presiding member.

Note: Subsection 101(5) of the Act permits the Principal Member to direct that a party to a review no longer be a party if he or she fails to comply with a direction or order of the SSAT or the Principal Member.

11 Family violence order or history

- (1) Within 14 days of making or being notified by the SSAT of the application for review, a party must give the SSAT a copy of any current family violence order which the party obtained against another party to the review.
- (2) A party must also advise the SSAT if his or her whereabouts, residential address, contact details and place of employment are not known to the other party due to a history of family violence.
- (3) A party who obtains a family violence order against another party to the review, after the making or notification of the application for review but before the hearing, must give the SSAT a copy of the order as soon as practicable.

Note: Subsection 21(3) of these Directions prescribes how a party, against whom another party has a current family violence order, must make any oral submissions to the SSAT.

12 Statement of financial circumstances

A party to whom the SSAT gives a “Statement of financial circumstances” form must complete and return the form to the SSAT within 14 days.

13 Request for another person to make submissions

- (1) A party who wishes another person to make submissions to the SSAT on the party’s behalf must seek the permission of the Principal Member at least 21 days before the day on which the submissions are to be made.
- (2) The request must be made in writing and must state:
 - (a) whether the permission is sought for the person to make oral submissions or written submissions or both;
 - (b) the name and contact details of the person;
 - (c) the relationship of the person to the party;
 - (d) the reasons why the party wishes to have the person make the submissions on the party’s behalf.
- (3) The SSAT must notify the other party of the request and ask whether that party has any objection to the request being granted by the Principal Member.
- (4) The SSAT will not permit both a party and a representative to make submissions.
- (5) Irrespective of whether a representative is making oral submissions, a party may be required to answer questions at the hearing and the presiding member (as delegate of the Principal Member) may issue a notice under paragraph 103K(1)(b) of the Act for that purpose.
- (6) A delegate of the Principal Member must make an order, under subsections 103ZAA(1) and 103ZAC(1) of the Act, directed to a representative.

(7) A copy of the order referred to in subsection (6) must be sent to the party.

Note: The matters which must be taken into account in deciding whether to grant permission for submissions to be made by another person on a party's behalf are contained in subsections 88(2) and 103C(2A) of the Act. Subsection 8(3) of these Directions specifies the circumstances in which a representative is treated as a party in the Directions. Section 16 and subsection 23(5) of these Directions also deal with procedure where there is a representative.

Division 5 Disclosure of information by the SSAT

14 Documents given to the SSAT by a party

- (1) The SSAT must give a copy of a relevant document of a party (or the relevant part of a document) to the Registrar and the other party.
- (2) Subsection (1) does not apply if the other party asked the SSAT not to send him or her any documents or correspondence in relation to the review.
- (3) A request that the SSAT not disclose information in a document to the other party must be made orally at a directions hearing or, in writing stating the reasons for the request, at or before the time the party gives the document to the SSAT.
- (4) The request must be refused if withholding the information from the other party could adversely affect the fairness of the review.
- (5) A document which was given to the SSAT by a party and contains personal information about that party may be given by the SSAT to the other party by electronic means with the consent of both parties.

Note: Subsection 10(2) of these Directions prescribes the information which a party can obliterate from a document without a direction of the presiding member. Section 33 of these Directions contains the procedures in relation to receipt of notices and material electronically from the SSAT.

15 Documents obtained by the SSAT from other persons

- (1) The SSAT must give a party a copy of any document, obtained by the exercise of the statutory powers of the Principal Member, which is to be considered in the review.
- (2) The SSAT must give the Registrar a copy of a document, obtained under section 103K of the Act, which is to be considered in the review.
- (3) Subject to subsection (4), no information is to be obliterated in the copy of a document referred to in subsection (1) unless the Principal Member, a Deputy Principal Member or the presiding member directs otherwise.
- (4) The following information must be obliterated in the copy of a document, referred to in subsection (1), which is given to a party:

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- (a) a party's residential address, other contact details, employer's name or address if there is a family violence order to protect that party;
 - (b) a party's residential address, other contact details, employer's name or address if the SSAT has been advised that that information is not known to the other party due to a history of family violence;
 - (c) place names if the locality in which a party lives is not known to the other party due to a history of family violence;
 - (d) any tax file number or passport number;
 - (e) a party's Centrelink client reference number or Child Support identification number;
 - (f) the number of the account on a bank statement (but not the numbers of any account to or from which money is transferred in the bank statement) other than the last four digits in that account number.

Note: This section does not apply to documents which the Registrar sends to the SSAT under subsection 95(5) of the Act. It is the practice of the Registrar to send a copy of those documents to the parties.

16 Access to documents by representative

- (1) The SSAT must not send a copy of documents to a representative, who is not a lawyer, without the permission of the Principal Member or a Deputy Principal Member.
- (2) The party may give his or her representative access to documents given to the party by the Registrar or the SSAT for the purposes of the review.

17 No access to certain documents

- (1) Before or after completion of the review, the SSAT must not give a party, or any other person, access to a document containing:
 - (a) notes made by a member in preparation for, or in the course of, a directions hearing or the hearing;
 - (b) any communication between members, or between staff and a member of the SSAT, in relation to the review.
- (2) After completion of the review, the SSAT must not give a party access to a document containing personal information about another person unless that document was given to the SSAT by that party.

18 Communication of protected information

- (1) Subject to subsection (2), communication of protected information for the purposes of subsection 16(3A) of the Act must be made through the Principal Member or a Deputy Principal Member.
- (2) A member may communicate protected information directly to a law enforcement authority if there is an immediate threat to the life of a person.

Division 6 Directions hearing

19 Convening and attendance

- (1) If the review does not involve an application under Part 6A of the *Child Support (Assessment) Act 1989*, a directions hearing may be convened only with the permission of the Principal Member or a Deputy Principal Member.
- (2) A directions hearing under section 103 of the Act is to be convened by the presiding member (as delegate of the Principal Member).
- (3) A directions hearing is to be held by telephone.
- (4) The SSAT must give a party at least 7 days notice of the day and time of a directions hearing unless the parties agree to a shorter notice period.
- (5) A party is required to participate in the directions hearing.

20 Record of directions hearing

- (1) The SSAT will electronically record a directions hearing.
- (2) A party must not electronically record any part of a directions hearing.
- (3) Subject to subsection 27(4), the SSAT must not give the electronic record, or a copy of the electronic record, of a directions hearing to a party or any other person.

Division 7 Hearing of a review

21 Oral submissions by telephone

- (1) A party or representative may ask for permission to make oral submissions to the SSAT by telephone.
- (2) Permission will be given unless a delegate of the Principal Member determines that it could:
 - (a) adversely affect the efficiency or effectiveness of the hearing;
 - (b) impede proper consideration of the review by the SSAT; or
 - (c) adversely affect the privacy of the hearing.
- (3) A party against whom there is a current family violence order must make oral submissions to the SSAT by telephone unless a determination has already been made that the party protected by the family violence order is to make submissions by telephone.

22 Interpreters

- (1) A relative or friend of a party will not be permitted to interpret at a directions hearing or the hearing.

- (2) A party who needs the services of an interpreter, at a directions hearing or the hearing, must tell the SSAT within 14 days of making, or being notified of, the application for review.
- (3) If the party is not proficient in English, the SSAT must arrange for an interpreter, accredited or recognised by NAATI in the relevant language, to attend any directions hearing and the hearing.
- (4) The presiding member (as delegate of the Principal Member) must make an order, under subsection 103ZAA(1) of the Act, directing the interpreter not to disclose personal information obtained by him or her in the course of the directions hearing or the hearing.

23 Adult persons who may be present at the hearing

- (1) At least 14 days before the hearing, a party must notify the SSAT of any person (other than an interpreter or representative) whom the party wishes to be present at the hearing.
- (2) If the party wishes to have a person give evidence to the SSAT, the party must notify the SSAT in writing of the matters about which he or she wants the person to give evidence.
- (3) The SSAT must advise the Registrar and the other party of notification received under subsection (1) or (2).
- (4) The presiding member will decide whether the SSAT will take evidence from a person.
- (5) A representative will not usually be permitted to give evidence at the hearing.
- (6) As delegate of the Principal Member, the presiding member will direct who may be present at the hearing or any part of the hearing.
- (7) The presiding member (as delegate of the Principal Member) must make an order, under subsection 103ZAA(1) of the Act, directing a person present at the hearing (other than a party or representative) not to disclose personal information about any person obtained by him or her in the course of the hearing.

Note: Section 9 and subsection 13(6) of these Directions require non-disclosure orders be made to a party or representative (respectively) and those orders encompass personal information about another person obtained in the course of the hearing. Interpreters are the subject of section 22 of these Directions.

24 No children at the hearing

A child must not be present during the hearing.

25 Giving evidence at the hearing

- (1) A party must be asked to take an oath or make an affirmation at the commencement of the hearing.

- (2) A witness must take an oath or make an affirmation prior to giving evidence at the hearing.
- (3) A party or witness giving evidence by telephone or other electronic communications equipment may only make an affirmation.
- (4) A witness will not usually be permitted to be present at a hearing before or after giving his or her evidence.
- (5) A person attending before the SSAT to answer questions, pursuant to a notice under paragraph 103K(1)(b) of the Act, must be asked to take an oath or make an affirmation before answering the questions.

Note: Subsection 23(2) of these Directions prescribes what a party must do if he or she wishes a person to give evidence to the SSAT.

26 Nature of a hearing

- (1) The hearing is to be conducted in an inquisitorial manner.
- (2) A party or a representative is not permitted to question a party or witness.
- (3) A party or representative may ask the SSAT to put a particular question to another party or witness.

27 Recording of hearing

- (1) The SSAT will electronically record the hearing.
- (2) A party, representative or any other person present at a hearing must not electronically record any part of a hearing.
- (3) Subject to subsections (4) and (5), the SSAT must not give the recording of the hearing, or a copy of the recording of the hearing, to a party, representative or any other person.
- (4) On the request of a party (including the Registrar) who has filed an appeal under section 110B of the Act, a copy of the recording will be given to Auscript for preparation of a transcript of the hearing at the expense of the party.
- (5) On the request of a party (including the Registrar) who applies for review by the Administrative Appeals Tribunal under section 103VA of the Act, a copy of any recording will be given to Auscript for preparation of a transcript of the hearing at the expense of the party.

Note: Subsection 16(5) of the Act prevents a member of the SSAT from being required to communicate “protected information” or produce a “protected document” (as those expressions are defined in subsection 16(1)) to a court except where it is necessary to do so for the purposes of the Act.

28 Adjourment requests

- (1) A party who wants the SSAT to adjourn a directions hearing or hearing must do all of the following:
 - (a) make a written request for the adjournment to the SSAT;
 - (b) make the request at the earliest opportunity before the directions hearing or hearing that the party wants adjourned;
 - (c) state in the request the reasons why the adjournment is sought; and
 - (d) attach any supporting documents to the request.
- (2) A request to adjourn a directions hearing, made prior to the date of the directions hearing, is to be referred to the Principal Member, a Deputy Principal Member, Senior Member or the presiding member.
- (3) A request to adjourn a hearing, made prior to the date of the hearing, is to be referred to the presiding member.
- (4) If a request to adjourn a directions hearing or hearing (as the case may be) is not made prior to the date of the directions hearing or hearing, the request must be made at the directions hearing or hearing.

29 Hearing without oral submissions

- (1) The SSAT is authorised, under section 103E of the Act, to hear the application for review without oral submissions from a party or representative (as the case may be) if:
 - (a) that party or representative is to make oral submissions by telephone or other electronic equipment and the presiding member is unable to contact the party or representative on the day fixed for the hearing before, or within 30 minutes after, the time fixed for the hearing; or
 - (b) that party or representative does not attend the hearing at the time fixed for the hearing; and
 - (c) the other party or representative does not consent to the application for review being dismissed.
- (2) If the party or representative contacts the SSAT or attends at the SSAT for the purpose of making oral submissions before the hearing has been completed, the authorisation under subsection (1) is revoked by this subsection and the party or representative must be permitted to make oral submissions.
- (3) If the party or representative contacts the SSAT or attends at the SSAT for the purpose of requesting an adjournment of the hearing before the hearing has been completed, the presiding member (as delegate of the Principal Member) may revoke the authorisation and fix another date and time for the party or representative to make oral submissions.

(4) Where subsection (3) applies, the party may obtain from Auscript (at his or her expense) a transcript of the recording of that part of the hearing for which he or she was not present for the purpose of making oral submissions at the resumed hearing.

(5) If the hearing has been completed before the party or representative contacts the SSAT, the authorisation referred to in subsection (1) cannot be revoked and the party or representative cannot make oral submissions to the SSAT.

Note: Subsection 103E(5) of the Act limits when an authorisation can be revoked.

30 Information etc received after the hearing

(1) The presiding member must decide whether information or written submissions received after the hearing will be taken into account by the SSAT in making its decision on the review.

(2) If the presiding member decides that the material will be taken into account by the SSAT, the parties must be given an opportunity to make a written response to the material.

(3) Subsection (2) does not apply to a party who gave the material to the SSAT.

(4) Where subsection (2) applies and a response is received by the SSAT, an opportunity to reply to the response will be afforded to a party only in exceptional circumstances.

Division 8 Reinstatement of an application

31 Request for reinstatement

(1) A request to the Principal Member to reinstate an application for review which was dismissed, under either section 100 or section 100A of the Act, must include a written statement of the grounds for making the request.

(2) Where the request is made more than 28 days after receipt of the notification that the application for review was dismissed, the request must include a written statement of the reasons for the delay in making the request.

(3) The SSAT must notify the other party of the reinstatement request and that any submissions in opposition to the request must be made within 14 days of notification.

(4) The request for reinstatement will be decided on the papers unless it would be inconsistent with subsection 88(2) of the Act to do so in a particular case.

Division 9 Communication with the SSAT

32 Contact with SSAT members

- (1) A party must not attempt to directly communicate with a member of the SSAT in relation to the review outside of a directions hearing or hearing.
- (2) Any information which a party wishes the SSAT to take into account in the review must be put in writing and delivered to the SSAT.
- (3) The document may be delivered by hand, post, facsimile transmission or email to the address on correspondence from the SSAT.
- (4) The review number must be quoted in all communications with the SSAT.

Note: Sections 14 and 30 of these Directions contain directions about procedure where information is received from a party.

33 Notification by the SSAT by electronic means

- (1) The SSAT will give any notification or material to the Registrar by electronic means.
- (2) A party may elect in writing to receive any notification or material from the SSAT by electronic means.
- (3) Notices or material given by the SSAT to a party by electronic means will be taken to have been received at the time when the electronic communication became capable of being retrieved by the addressee.
- (4) An election under subsection (2) may be revoked by a party at any time by giving written notice of the revocation to the SSAT.
- (5) A revocation by a party of an election takes effect from the date on which it is received by the SSAT.

Note: Subsection 14(5) of these Directions precludes personal information about a party being given to the other party by electronic means without the consent of both parties.

34 Requests in relation to the SSAT's decision

- (1) Where the SSAT has given a party the statement of reasons described in section 103X of the Act, the SSAT will not give the party any further explanation of its decision.
- (2) Any request by the Registrar or a party for correction of an obvious error in the text of a decision or statement of reasons must be made to the SSAT in writing.

Note: Examples of obvious errors are given in subsection 103Y(3) of the Act.

(3) A request under subsection (2) must be referred to the presiding member for decision.

(4) The SSAT will not answer any questions in relation to its decision or conduct of the review.

Note: Clause 21(1) of Schedule 3 to the *Social Security (Administration) Act 1999* confers the same protection and immunity on a member of the SSAT in the performance of his or her duties as a Justice of the High Court. Clause 21(1A) of that Schedule prohibits a member from being required to give evidence to a court, tribunal, authority or person having the power to require the production of documents or the answering of questions. Subsection 16(5) of the Act also prevents a member of the SSAT or staff of the SSAT from being required to communicate protected information or produce protected documents to a court except where it is necessary to do so for the purposes of the Act.

Division 10 Production of documents by the SSAT

35 Subpoenas etc

(1) Unless it is necessary to do so for the purposes of the Act, the SSAT must not produce a document in relation to the review.

(2) If a subpoena is issued to a person at the SSAT for the production of the recording of the hearing by the SSAT for the purposes of an appeal under section 110B of the Act, the addressee will object to a copy of the produced recording being made by (or for) a party to the appeal.

(3) If a subpoena is issued to a person at the SSAT for the production of the recording of the hearing by the SSAT other than for the purposes of the Act, the addressee must object to production of the recording.

Note: See the note to section 34 of these Directions.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.