**Claasen and Volante (Child support) [2025] ARTA 624 (26 February 2025)**

**Applicant/s: Mr Claasen**

**Respondent: Child Support Registrar**

**Other Parties: Ms Volante**

**Tribunal Number:**  **2024/BC028056**

**Tribunal:**  **Member S Letch**

**Place: Brisbane**

**Date:** **26 February 2025**

**Decision:** The Tribunal sets aside the decision under review and in substitution decides that:

1. Mr Claasen’s adjusted taxable income is to be varied to $200,000 for the period 10 August 2023 until 8 August 2028;
2. Mr Claasen’s annual liability is increased by $4,000 for the period 1 January 2025 to 31 December 2025 (in respect of an additional contribution for school fees).

 **CATCHWORDS**

 *CHILD SUPPORT – change of assessment – special circumstances – financial capacity is not fairly represented by taxable income as assessed by the ATO – a ground for departure established – education costs of the children – father’s rate of child support payable is increased – decision under review set aside and substituted*

Names used in all published decisions are pseudonyms. Any references appearing in square brackets indicate that information has been omitted from this decision and replaced with generic information pursuant to subsection 16(2AB) of the *Child Support (Registration and Collection) Act 1988.*

# Statement of Reasons

**BACKGROUND**

1. Mr Claasen and Ms Volante are the parents of [Child 1] (born 2007), [Child 2] (born 2008) and [Child 3] (born 2010). Mr Claasen has been assessed by Child Support as liable to pay child support to Ms Volante. Mr Claasen seeks a review of an objection decision which “allowed in part” his objection to a “change of assessment” decision of 20 February 2024.
2. By way of background, it is convenient to set out some extracts from the objections officer’s decision dated 14 May 2024:

…

The assessment

In the current period, from 10 August 2023 to 9 November 2024, Ms Volante is assessed to pay an annual rate of child support of $1,650 based on her 2022-23 ATI of $82,534 and Mr Claasen’s 2022-23 ATI of $71,964.

The liability is registered for collection by Services Australia Child Support (the agency). At the date of writing this decision, Mr Claasen owes Ms Volante child support arrears of $7,296.62. Mr Claasen has also been overpaid child support of $639.30.

There have been several previous change of assessment decisions made by the agency in this case.

DECISION UNDER REVIEW

On 8 September 2023, Ms Volante applied for a change to the assessment under Reason 8A in relation to Mr Claasen’s income, property and financial resources.

On 20 February 2024, the change of assessment decision maker found Reason 8A established and changed the assessment as follows:

- For the period 10 August 2023 to 10 August 2025, Mr Claasen s ATI is set at $150,000 per annum.

…

The income used for Mr Claasen in the current assessment is his 2022-23 ATI of $71,964.

According to a property search, the property located at [Suburb 1] is owned by a company (not [Company 1] Pty Ltd). ASIC records confirm that, at face value, Mr Claasen is not linked to the company that owns the property.

When Mr Claasen spoke to the change of assessment decision maker, he said he was living in the [Suburb 1] property as a caretaker and was not paying rent at that time. In his written change of assessment response, Mr Claasen declared his weekly rent to be $430. In his letter, [Mr A] said he assesses the rental value of the house on site as approximately $420 per week. [Mr A] said the benefit of the housing Mr Claasen receives is valued at $21,840 per year. Ms Volante said the estimated rental income of the property is around $700 per week.

I am satisfied Mr Claasen receives a benefit of at least $21,840 for the housing which is not reflected in the income amount used for him in the child support assessment.

During the change of assessment process, Mr Claasen stated his income is $75,000 per annum.

However, the payslips he provided show his annual salary to be $55,396. In his letter, Mr

[A] said Mr Claasen s base income, as per his contract of employment, is $75,000 per annum, excluding the benefit of the housing provided at a value of $21,840 per year.

According to information obtained from the Australian Securities and Investment Commission

(ASIC), Mr Claasen ceased to be a Director of [Company 1] Pty Ltd on 12 March 2021.

On 27 December 2023, the agency received information from a financial institution which

confirms:

- Mr Claasen holds two bank accounts in his sole name

- Mr Claasen is the sole signatory to the bank account held in the name of [Company 1] Pty Ltd.

The bank statements confirm total deposits of $68,978.67 to Mr Claasen s personal account in the period covered by the statement (22 September 2023 to 22 December 2023). Some of the deposits are in the amount of $881.31 (the net amount shown on the payslips provided by Mr Claasen).

However, there are other significant deposits from the company account to Mr Claasen s personal

account, including:

- $5,000 on 26 September 2023

- $1,000 on 4 October 2023

- $1,000 on 6 November 2023

- $2,000 on 6 November 2023

- $10,000 on 10 November 2023

- $30,000 on 13 November 2023.

The bank statements also show transfers from Mr Claasen s personal account to the business account ($4,000 on 1 November 2023 and $2,649.92 on 9 November 2023).

Mr Claasen submits he is just an employee of [Company 1] Pty Ltd. If that is the case, the above transfers appear to be unusual.

Based on the bank statements, Mr Claasen received total deposits of $68,978.67 to his personal

account over a three-month period; this annualises to $275,915 (rounded). Additionally, Mr Claasen receives the benefit of at least $21,840 in relation to the arrangement for the house at [Suburb 1]. I consider Mr Claasen is also likely to receive other benefits such as the use of motor vehicles owned by the company.

I am satisfied that an income amount of $300,000 provides a more accurate reflection of Mr Claasen s income, property and financial resources for child support purposes.

In the current assessment, Ms Volante is assessed to pay an annual rate of child support of

$1,650 based on her 2022-23 ATI of $82,534 and Mr Claasen s 2022-23 ATI of $71,964.

If an income of $300,000 was applied to the assessment for Mr Claasen, with all other variables

unchanged, the parents roles would reverse. Mr Claasen would be assessed to pay an annual rate of child support of $19,452. I find this change to be significant and I am satisfied the assessment is unfair.

Reason 8A is established.

…

As stated, the income used for Ms Volante in the current assessment is her 2022-23 ATI of

$82,534. There is no information before me to indicate that there are any special circumstances to be considered in relation to Ms Volante s income. I am satisfied Ms Volante s income, property and financial resources are accurately reflected by her 2022-23 ATI of $82,534. There is also no information to indicate that Ms Volante has an unexercised earning capacity within the meaning of child support legislation.

Mr Claasen s income, property and financial resources were considered under Reason 8A above. I am satisfied an income amount of $300,000 provides a more accurate reflection of Mr Claasen s income, property and financial resources for child support purposes. I intend to apply this income amount to the assessment for Mr Claasen. There is no information to indicate that Mr Claasen has an unexercised earning capacity within the meaning of child support legislation.

I am unaware of any out of the ordinary expenses relating to either parent s costs of self-support or in relation to their duty to maintain another person or the child which require further consideration in this decision.

…

I have reviewed the website for [a named] College which confirms the annual fee for a Year 10 student is $8,010.

Based on the information available for this decision, I am satisfied Mr Claasen is paying

approximately $25,907 per year in school fees while Ms Volante is responsible for paying

approximately $8,010 per year in school fees. The total school fees amount for all three children is $33,917. Mr Claasen is currently meeting approximately 76% of the total school fees while Ms Volante is responsible for approximately 24% of the total school fees.

I am satisfied it is fair that each parent contributes to the children s school fees according to their capacity. Having considered the significant disparity between Ms Volante s 2022-23 ATI of $82,534 and the income of $300,000 I have found for Mr Claasen; I am satisfied the current arrangement in relation to school fees is just and equitable. I do not intend to change the assessment in relation to the school fees.

…

Ms Volante lodged her change of assessment application on 8 September 2023. I find it is just and equitable to change the assessment from 10 August 2023, this being the date Ms Volante became the paying parent.

I will set Mr Claasen s ATI at $300,000 from 10 August 2023 to 10 August 2025.

I consider this timeframe is appropriate because:

- it will provide a period of stability to the assessment in relation to the income used for Mr Claasen;

and

- it is unlikely Mr Claasen s future income tax returns will accurately reflect his income, property and financial resources for child support purposes.

…

The change of assessment decision made on 20 February 2024 is set aside and replaced with the following:

- From 10 August 2023 to 10 August 2025, Mr Claasen s ATI shall be set at $300,000.

…

1. Mr Claasen attended the hearing in person. Ms Volante participated in the Tribunal’s hearing by conference telephone. In making its decision, the Tribunal took into account the evidence of both parties, the Child Support materials, and the additional materials submitted by both parties.

**CONSIDERATION**

**The legislative framework**

1. The rate of child support payable by a liable parent is usually based on an administrative assessment under Part 5 of the *Child Support (Assessment) Act 1989* (the Act). A formula is used. It takes into account variables including each parent’s adjusted taxable income for the last relevant year of income, the number of children and the level of care provided by each parent.
2. Part 6A of the Act allows for a departure from an administrative assessment (a process commonly known as a “change of assessment”). Under subsection 98C(1), the Registrar may make such a departure determination if three matters are established:
* one, or more than one, of the grounds for departure referred to in subsection 98C(2) exists (subparagraph 98C(1)(b)(i));
* a departure is just and equitable as regards the children and each parent (sub-subparagraph 98C(1)(b)(ii)(A)); and
* it is otherwise proper to make a departure decision (sub-subparagraph 98C(1)(b)(ii)(B)).
1. Subsection 98C(2) provides that the grounds for departure are the same as the grounds set out in subsection 117(2) of the Act.
2. If satisfied that a ground or grounds exist and that it would be just and equitable and otherwise proper to make a particular determination, the Tribunal may make one of the determinations prescribed in section 98S of the Act. It permits a range of determinations, including varying the rate of child support payable, the adjusted taxable income or the cost percentage for a child.

**Issue 1 – Is there a ground to depart?**

1. Subparagraph 117(2)(c)(ia) of the Act, commonly referred to by Child Support as Reason 8A, provides as a ground for departure:

(c) that, in the special circumstances of the case, application in relation to the child of the provisions of this Act relating to administrative assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child:

…

(ia) because of the income, property and financial resources of either parent; or

(ib) because of the earning capacity of either parent; …

1. The starting proposition is that the child support formula should apply. Only in special circumstances should a departure be made. The words “in the special circumstances of the case” are not defined in the legislation. While it is not possible to define with precision the meaning of that term, it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary. That is, the intention of the legislature is that the Tribunal will not interfere with the administrative formula result in the ordinary run of cases. In *Gyselman v Gyselman* (1992) FLC 92-279, it was held that “special circumstances” were “facts peculiar to the particular case which set it apart from other cases”.
2. Mr Claasen properly concedes that a better reflection of his financial capacity should include the benefit he receives by not paying rent and some private use of a motor vehicle (he suggests a figure of $120,000 per annum is more accurate than the assessment by Child Support). I am satisfied that Mr Claasen’s financial capacity is not fairly represented by his taxable income as assessed by the ATO. The formula assessment results in an unfair level of child support; in the special circumstances of the case, there is a ground to depart from the child support formula.

**Issue 2 – Is it just and equitable to depart from the administrative assessment?**

1. The next relevant consideration for the Tribunal is whether a departure from the administrative assessment is just and equitable. This enquiry directs attention to what is fair to the parents and their children. Regard must be had to a variety of factors such as the needs of the children, the parents’ commitments and any hardship that would be caused by departing or not departing from the formula. The Tribunal is obliged to conduct reviews in a way that is, amongst other things, informal and quick: section 9 of the *Administrative Review Tribunal Act 2024*.

***The hearing***

1. Mr Claasen told the Tribunal that he concedes that his “wage” of around $75,000 per year is not representative of his financial capacity; including the “rent” he does not pay for the property in which he lives and some private use of a motor vehicle, he suggests a figure of $120,000 to be fair. Ms Volante suggested that Child Support had conducted a fair investigation and reached a fair figure of $300,000 which she suggested proper “at least in a capital sense if not income”.
2. Mr Claasen said that in the negotiation of his employment he receives some “rental assistance”. The house at [Street 1] has a market rental of $420 per week. Notwithstanding the Child Support materials including a social media post of Mr Claasen and his new partner standing in front of a “sold” sign, Mr Claasen said that he did not know what the house was sold for and that “you would have to ask the owner”.
3. In relation to [COMPANY 2] Propert Pty Ltd ([COMPANY 2]), Mr Claasen said he “believes” [Mr A] (his friend since school) to be a director and that the property in which he lives is owned by [COMPANY 2]. Mr Claasen did not accept the suggestion from Ms Volante that the name “[COMPANY 2]” is clearly derived from the initials of the children.
4. Mr Claasen contends that the bank transfers relied upon by Child Support for the period September 2023 to December 2023 were “personal loans”. He said other employees were given the same opportunity. Mr Claasen initially said that there were “written agreements” for the purported “loans”; he handed to the Tribunal various unrelated documents which were evidence of an attempt earlier in the Tribunal process for the parties to reach a negotiated outcome. Mr Claasen said there was nothing in writing and there was a “verbal agreement” only; when pressed on details such as interest rate and repayment schedules, Mr Claasen said the loans were “interest free” and vaguely suggested a 12 month repayment deadline for each “loan”. Mr Claasen also suggested some lump sums were “advances of wages” which, like the loans, were all approved by [Mr A].
5. In relation to the social media post of July 2023 depicting Mr Claasen with his partner and the children standing in front of a “sold sign” at the [Street 1] property including comments such as “*We would love to share with our family and friends a little something that came our way…Thank you so much to everyone who has helped us along the way in reaching this goa*l”, Mr Claasen conceded that whilst it might “look like” the property was his and his family’s, the reality was that it was not. When it was put to Mr Claasen that the property was sold for around $1.5 million, Mr Claasen suggested he did not know the price and suggested “you would have to ask the owner”.
6. Mr Claasen was asked how his wage of $75,000 had been determined; he said it will now be renegotiated to a higher level to reflect the fact he is living “rent free”. When it was suggested to Mr Claasen that $75,000 seemed a very low figure for an [Occupation 1] of his knowledge and experience, Mr Claasen said most [Occupation 1]s “operate somewhere between $80,000 and $100,000”. When it was put to Mr Claasen that it seemed unusual for the business to need a boat, Mr Claasen said that was the “owner’s decision”. Ms Volante said the boat sits in the workshop used by Mr Claasen and that Mr Claasen had taken friends and family [on] a boating trip.
7. Mr Claasen said the previous company had been closed on financial advice due to a large ATO debt (in the vicinity of $150,000 to $180,000) and other debts. Mr Claasen said he was not allowed to be a director of the new company because of the rules related to the way the previous company was dissolved.
8. Mr Claasen told the Tribunal that he is now only the “operations manager”; [Mr A] is busy (however, he said [Mr A] has done some work in the business to cover leave). He conceded that in terms of the running and organising the business, his role in the new company is more or less the same as the old business. In relation to whether the business was making a profit, Mr Claasen said “you would have to ask the owner”.
9. Ms Volante told the Tribunal she considers the suggestion that the value of rent is a mere $425 per week to be well below market value. She said Mr Claasen uses the property as his own, including the workshop area and the appliances such as a work vehicle and a tractor. She does not accept the validity of the “personal loans” and suggests they are clearly a way for Mr Claasen to take money from the business which he effectively owns and operates. She suggested that Mr Claasen also engages in “cash work” of the books.
10. In relation to travelling away for work, Mr Claasen said that was “rare”; he estimated he had been away for 10 weeks over the last year. Ms Volante suggested Mr Claasen was away more than that and said Mr Claasen’s partner would regularly look after the children and drop them to school whilst Mr Claasen was away. She said their daughter, [Child 1], also works away with Mr Claasen.
11. Ms Volante suggested any transfers by Mr Claasen back to the business bank accounts were not “repayments” but to cover expenses such as wages. She does not believe [Mr A] – Mr Claasen’s best friend since school – has any legitimate role in Mr Claasen’s business. She said it is “exactly the same business” Mr Claasen ran when they were together. It operates in exactly the same way and is controlled by Mr Claasen. He still has contracts with the same companies as before. Ms Volante believes the arrangement has been set up with [Mr A] to minimise child support.
12. In relation to school fees, up until the end of 2022, Mr Claasen was paying for private school fees for all the children. From the start of 2023, Ms Volante said Mr Claasen refused to pay for [Child 2]’s fees so she was forced to start paying them.
13. In relation to her Statement of Financial Circumstances, Ms Volante said she is still employed in the same job; she earned around $81,000 in 2023/24. Her household consists of herself and her partner, and the children when she has them. She did not identify any other unusual or noteworthy expenses.
14. Mr Claasen said that from the start of this year, [Child 1] is working as an [occupation] and earning up to $40,000 per year. Mr Claasen said she only became full-time from the start of 2025 as she was “part-time” around school commitments which she finished in 2024. Ms Volante suggested she started “full-time” by November 2024 as school had finished; Mr Claasen disputed this saying [Child 1] attended “schoolies” and took other holidays in the lead up to the Christmas period.
15. In relation to his expenses, Mr Claasen said that his contribution to school fees is no longer in the order of $25,000 per annum; this year, he is paying around $8,000 for [Child 3] (as [Child 3] transferred to another school in late 2024; he suggested he paid a bit less than $25,000 in 2024). Mr Claasen said his other expenses were “average”.
16. In terms of going forward, Mr Claasen indicated a general preference for a longer period to avoid transacting with Child Support. Ms Volante said she would have reservations about going out as far as 2028; she said Mr Claasen would show his “true colours” and his income would go much higher. Ms Volante maintained that Mr Claasen does a lot of “cash jobs” and receives many perks including the cars and boats on the property.

***Consideration***

1. I found Mr Claasen somewhat uncooperative and vague in some of his evidence to the Tribunal. Without evidence in writing of the “personal loans” claimed to have been accepted by Mr Claasen under some ill-defined and loose verbal arrangement, I do not accept transfers to Mr Claasen from the business are legitimate loans; some or all of those sums should be regarded as a financial resource available to Mr Claasen. In my assessment, the new company is operating in a very similar (if not identical) manner to the prior entity. I consider [Mr A]’s role in the new entity to be marginal, at best; whether motivated by Mr Claasen’s debt issues in subsequently being a director, or with a view assisting him manage child support obligations, or a combination of both or other reasons, [Mr A]’s role is in my estimation largely “in name only” in order to facilitate to Mr Claasen’s ongoing management and running of what is, in substance, his business. The business continues to operate in his name; he is the main contact point for the business. I do not consider the name of the entity (“[COMPANY 2]”) holding the property in which Mr Claasen lives and operates the business to be a remarkably unlikely coincidence. To the world via social media posting, Mr Claasen and his partner have represented the new property as being their own; in substance, lifting the corporate veil, I find that it is. I find a general and deliberate pattern on Mr Claasen’s behalf to attempt to distance himself from the business and its resources.
2. Quantifying the extent of financial resources available to Mr Claasen is not an easy task. Child Support seized upon various transfers itemised in the objection decision at folio 9 of the Child Support hearing papers. This relatively small sample size arguably operates in an imprecise way and may be apt to overstate Mr Claasen’s financial position. I accept some transfers were made by Mr Claasen back to the business (such as the transfers he identifies at folio A9); I do not accept those to be “loan repayments” but likely for the purposes of managing the legitimate expenses of the business (such as wages).
3. In my assessment, a figure of $300,000 is too high as I do not consider it likely Mr Claasen retained all of the benefits of the sums transferred to him. At the same time, I consider Mr Claasen’s estimation of his financial capacity of $120,000 (including “rent” and private use of a motor vehicle) to be conservative in light of his established capacity to draw cash sums from the business at will on an ad hoc basis.
4. Doing the best I can with the evidence available to me, and in light of what appears a strong and successful business enterprise operating in a high demand environment - adopting a broad brush, I consider attributing Mr Claasen, who I regard as “the business” and the recipient of all of its benefits, with a financial capacity of $200,000 which fairly represents a reasonable assessment of his financial capacity in all the circumstances.
5. I do not consider any adjustment is required to Ms Volante’s adjusted taxable income. Her financial capacity is appropriately represented by her taxable income as assessed by the ATO under the rolling formula arrangement. I also see no particular reason to backdate the “start day” of the departure any earlier than 10 August 2023 (just before Ms Volante’s application for a change of assessment, and when she became the “paying parent”).
6. On my calculation, in broad terms, with two children (after [Child 1] ceased to be a child of the case from early March 2025 upon turning 18), would render Mr Claasen liable for just over $13,000 per year. I note that assessing his adjusted taxable income as $300,000 would add about $3,500 to the annual assessment.
7. In 2024, and with Mr Claasen’s income recorded as $200,000 and [Child 1] in his 96% care, his annual liability would be in the order of $5,600; without [Child 1] as a child of the case, that liability would increase sharply to over $12,000. It seems to me that from the beginning of 2025, [Child 1] should be regarded as working full-time and earning some $40,000. For the purposes of “Reason 4”, that fact should be considered in terms of the overall assessment. I note that [Child 1] only remained a child of the case for just over two months into the 2025 calendar year.
8. However, balanced against that is the fact that Mr Claasen has paid appreciably more by way of school fees over some years (until the start of this year where each parent is paying for one child). In recognition of that fact, and notwithstanding that I have assessed Mr Claasen’s financial capacity as much greater than Ms Volante’s, I do not consider it necessary to make an adjustment for [Child 1]’s financial independence from the beginning of 2025 for the short period she remained a child of the case.
9. I note Mr Claasen is, according to the recent Child Support papers, around $6,000 in arrears as of the end of January 2025. Reducing Mr Claasen’s income from $300,000 to $200,000 from 10 August 2023 may result in a relatively small overpayment for Ms Volante; I do not consider that will visit undue hardship upon her and no particular adjustment is warranted.
10. From the beginning of 2025, I consider an adjustment should be made for school fees notwithstanding that each parent is meeting similar costs for one child each. I have found Mr Claasen to have a much greater financial capacity than Ms Volante which I consider should be reflected in the assessment. Ms Volante is meeting the school fees for [Child 2] in 2025 (for year 12) of at least $8,000; in my assessment, a sum of $4,000 should be added to Mr Claasen’s annual liability for 2025. The result will be that in 2025, Mr Claasen will meet approximately 75% of the total fees for both children.
11. In terms of the end of the departure period, there is a desirability for certainty which must be weighed against the possibility of future changes. Given Mr Claasen’s adjusted taxable income as assessed by the ATO is not likely to reflect his actual financial capacity for child support purposes, I favour a longer period with a view to possibly limiting the engagement of the parties with Child Support. I will vary Mr Claasen’s income until the likely end of the case in 2028 when [Child 3] turns 18 years of age. Of course, if there is a very material change (such as Mr Claasen becoming unemployed, for example), both parties will remain at liberty to make a fresh departure application.
12. I consider it just and equitable to make a departure in the same terms set out above.

**Issue 3 – Is it otherwise proper to make a departure determination?**

1. The requirement to consider whether a departure would be otherwise proper directs attention to what is fair to the community. It is necessary to consider the effect of any departure from the administrative assessment on entitlements to income-tested pensions, allowances and benefits. Parents rather than the community have the primary duty to maintain a child.
2. The rate of child support should reflect the obligation of both parents to take financial responsibility for the children and, where increased, may decrease any income-tested benefits payable. A departure is therefore proper.
3. As I have reached a different conclusion to the objections officer, the decision under review will be set aside.

**DECISION**

The Tribunal sets aside the decision under review and in substitution decides that:

1. Mr Claasen’s adjusted taxable income is to be varied to $200,000 for the period 10 August 2023 until 8 August 2028;
2. Mr Claasen’s annual liability is increased by $4,000 for the period 1 January 2025 to 31 December 2025 (in respect of an additional contribution for school fees).

|  |  |
| --- | --- |
| Date(s) of hearing: | **Wednesday, 29 January 2025** |
| Representative for the Applicant: | **Self-represented** |
| Representative for the Other party: | **Self-represented** |