

FAMILY LAW MATTERS
CHILD SUPPORT – GENERAL ADVICE



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CHILD SUPPORT – GENERAL ADVICE

In the event that you have separated from your partner and you have a Child or Children of the relationship, child maintenance is determined under the provisions of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*. This is known as Child Support.

The Assessment Act established the Child Support Agency (“the Agency”) which was formed to make separated Parents responsible for the financial support of their Children. The Agency administers the Child Support Scheme which was introduced by Government in 1988. The scheme involves the assessment of Child Support in accordance with various formulas as well as the enforcement of Court Orders, Child Support Agreements and Child Support Assessments.

The Government recently implemented a 3 stage reform process for Child Support. The third and final stage of the scheme came into operation on 1 July 2008. The changes sought to reform the Family Law System to encourage shared parenting, reduce conflict and ensure Child Support is paid in full and on time. One of the most significant changes was the introduction of a new Child Support formula. The formula is used to calculate how much, if any, Child Support is payable by one Parent to another for the support of the children. There are 6 different formulas which are variations from 1 basic formula. In summary the following information is used to calculate a Child Support Assessment:

1. The Parents’ incomes;
2. The percentage of time the Child spends with each Parent and the percentage of the costs met by this care;
3. The costs of the Child.

Either Parent can apply for an Administrative Assessment in relation to a Child. This involves a formal Application to the Agency which can be completed in person, over the telephone or on line. The Agency utilises this information to formulate an Administrative Assessment and then ensures that that amount is collected and paid to the recipient spouse.

Failure to pay a amount made in an Assessment is treated as a debt to the Federal Government and will be treated as such. The Agency has far reaching powers to seize property or garnish wages. The Agency generally carries out its own enforcement proceedings at no cost to the payee Parent.

CHILD SUPPORT AGREEMENTS

In some instances Parents come to an agreement in relation to the amount of Child Support that will be payable by one Parent to another. This agreement can be documented by way of a Child Support Agreement. As of 1 July 2008 there are 2 types of Child Support Agreements that can be made, they are as follows:

1. Limited Child Support Agreements;
2. Binding Child Support Agreements.

Limited Child Support Agreements:

1. Can be made without legal advice;
2. Must be in writing and signed;
3. Can only be made in relation to a Child if an Application for an Administrative Assessment could be made;
4. Can only be made between an eligible carer and a person who is a Parent of the Child and resident in Australia on the day the Agreement is entered into;
5. Has no effect unless and until it is accepted by the Registrar of the Child Support;
6. Must be for at least the amount of Child Support that would otherwise be payable under the Child Support formula;
7. Has a statutory sunset clause of 3 years after which either party can terminate the Agreement.

Binding Child Support Agreements:

1. Both parties must receive legal advice;
2. Must comply with the same formal requirements as a limited Child Support Agreement;
3. May provide for a lower rate of Child Support than would be payable under the formula.

Both Binding and Limited Child Support Agreements have no effect unless and until they are accepted by the Child Support Agency. The Child Support Registrar will consider whether the amount is reasonable and if the Agency is of the opinion that the amount is less than what is reasonable, it may require the parties to revert to the Administrative Assessment.

Neither a Binding nor a Limited Child Support Agreement can be varied. However both can be terminated and replaced with new Agreements.

It is possible to pay a lump sum amount for Child Support. It is also possible to enter into a Parenting Plan which contains a Child Support Agreement.

For a general indication of your liability to pay Child Support, you should go to our links, scroll to the Child Support Agency and follow their links to the Child Support Estimator.

If you have an issue in relation to relocation or Children's matters generally, you should contact us for specific advice.