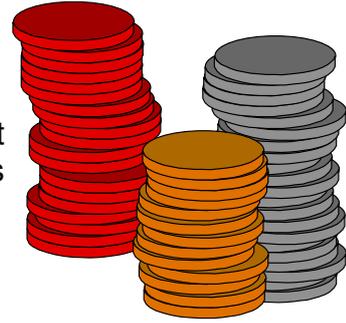


## CHILD SUPPORT

As at 1 July 2008 new legislation came into force that reformed the way that Child Support is calculated and the way and types of Child Support Agreements that can be entered into. The Child Support formula was replaced by several formulas that now take into account the different types of family units that exist in Australia and recognise that as children grow they are more costly to provide for.



Child Support is payable by all parents who are responsible for contributing to the wellbeing and maintenance of their children who do not provide care for them on a daily basis.

Arrangements can still be made to meet this liability by arranging for a formal assessment to be conducted by the Child Support Agency or by coming to an agreement with your partner and entering into a private Child Support Agreement. There are now two types of Child Support Agreements, Limited Child Support Agreements and Binding Child Support Agreements.

A Child Support Agreement may also be part of a document that contains a parenting plan under the Family Law Act.

### **Limited Child Support Agreements**

Limited Child Support Agreements give parents some flexibility to make arrangements without committing themselves to a long term agreement. They do not require independent legal advice before the Agreement is signed. An administrative assessment does need to be in place before the Agreement is lodged with the Child Support Agency and the amount payable in terms of a Limited Child Support Agreement must be for at least the amount of the existing child support formula assessment. Consideration should be given to the accuracy of this assessment before entering into this type of agreement.

If both parents wish to end a Limited Child Support Agreement they can do so by making a new Agreement or by simply agreeing in writing to end the existing agreement.

The Agreement can also be terminated unilaterally by either parent if the Notional Assessment (which is used to calculate Family Tax Benefit and approximates the amount of child support that would be payable if the Agreement had not been made) changes by more than 15% in circumstances not contemplated by the Agreement or at any time after three years.

Given the relative ease of ending limited agreements, they will not generally be appropriate mechanisms for arrangements that are intended to form part of a longer term settlement.

## **Binding Child Support Agreements**

Binding Child Support Agreements provide a high level of certainty and finality of Child Support arrangements for parents. Binding Agreements are intended to provide for longer term arrangements. Legal advice is therefore required prior to entering into and when terminating the Agreement to ensure that parents understand the consequences of making such an Agreement and to provide some protection against coercive or misleading behaviour.

Any transfer of an amount (such as a house) under the lump sum payment provisions effective from 1 July 2008 must be made using a Binding Child Support Agreement.

An Administrative Assessment does not need to be in place before the Agreement is accepted, except where the Binding Agreement provides the crediting of a lump sum.

## **Setting Aside Child Support Agreements**

Neither Agreement whether Limited or Binding can be varied.

A Limited Child Support Agreement may be terminated by a subsequent Binding Child Support Agreement or by entering into a further Limited Child Support Agreement.

If parents wish to end a Binding Child Support Agreement before the agreed end date they must again seek independent legal advice and make a formal Termination Agreement or a new Binding Child Support Agreement so that it terminates the previous arrangement. If only one parent wishes to end the Agreement they must seek a Court Order to set the Agreement aside but such Order will only be available in very limited circumstances.

## **Applying to the Court for Departure Orders**

In most circumstances, parents will be required to use the administrative departure process (change of assessment, and, if necessary administrative objection and subsequent appeal to the Social Security Administrative Tribunal) to have formula assessments changed.

Parents with a child support formula assessment can, in limited circumstances, apply directly to a court for a departure from their assessments. These circumstances include when a parent or non-parent carers application to CSA for a change to the administrative assessment has been refused because the matter is too complex, there are proceedings in relation to property already before the Court or a person is assessed to pay child support at the minimum annual rate and is seeking to have this rate reduced to nil.

## **Court Orders or Child Support Agreements that vary the Child Support Assessment**

Generally, variations that can be made to formula assessments fall into two categories, variations due to circumstances that effect the resources of the parents and variations due to circumstances that effect the cost of the child.

A factor relevant to these variations and relevant to varying a parent's Adjustable Tax Income will occur when a parent has resources not reflected in their adjustable tax income such as income from a Superannuation Fund.

In addition, the sub-supportive amount or relevant dependent child amount could be increased to recognise factors such a high medical costs of the parent themselves or their relevant dependant. However, generally if the cost of the child is higher than normal this higher cost should be distributed between the parents in accordance with their share of available resources, in the same way as the cost of a child is normally distributed.

Sometimes it may be appropriate to seek to adjust the annual rate payable instead for example, a parent paying child support may particularly want the child to attend a certain school, and therefore agree to bare all related costs. Adjusting the cost of the child would distribute the extra costs between the parents, so the amount payable could be adjusted instead, depending on who actually pays the school fees.

### **Payments to Third Parties**

A Court Order or a Child Support Agreement can also make provision for a parent to pay Child Support in the form of payment to third parties. The types of payments that can be made under these provisions are not limited. The most common types are school fees, mortgage payments, health insurance and orthodontic treatment.

If you require our assistance with any aspect making arrangements for an assessment of Child Support to be conducted, entering into a Child Support Agreement or seeking an amendment to the payments you make or receive please do not hesitate to contact us on 9525 8100.