
Child Support Agreements

Parents may not want the child support formula to apply in their case. They can enter into a Child Support Agreement instead.

We can assist you to negotiate and prepare a Child Support Agreement.

Advantages of a Child Support Agreement

Some advantages of a Child Support Agreement are:

- Parents can agree to child support being paid in a different way or at a higher or lower level than might be assessed under the formula
- Parents can agree to more flexible methods of payment to fit in with the timing of income being received or expenses being incurred
- The agreement can deal with specific arrangements that might not be covered by a child support assessment. For example, it can deal with the payment of private school fees or other expenses paid for the benefit of a child
- It can be drafted to incorporate payments from a child maintenance trust. For some parents this is a more tax effective method of payment

What are the requirements of a valid Child Support Agreement?

The formal requirements of a Child Support Agreement are that it must:

- be in writing
- be signed by both parties
- relate to a child eligible to receive child support payments
- include clauses relating to some form of child support, whether periodic payments, lump sum payments or payments "in kind"

Effect of a Child Support Agreement

A Child Support Agreement can be registered with the CSA. If the CSA accepts registration of the agreement, it is binding on both parents and can be enforced in the same way as a child support assessment (cash obligations), Court order about child support (non-periodic obligations such as school fees and medical expenses)

Child Support Agreements and Centrelink

The interaction between child support laws and Centrelink laws is important - including:

1. The CSA will not register a Child Support Agreement which sets the level of child support at a rate lower than the formula assessment if the parent receiving the child support is entitled to an income tested pension or benefit.
2. If a parent receives a lump sum payment under a Child Support Agreement and is or becomes entitled to an income tested pension or benefit, the 25% rule applies. Under the 25% rule a child support assessment cannot be reduced by more than 25% to account for payments that are not periodic payments.

It is important to obtain legal advice before agreeing to lump sum payments of child support.

Changes to the laws relating to Child Support Agreements

Major changes to the laws dealing with Child Support Agreements start on 1 July 2008.

Child Support Agreements

From 1 July 2008 there are two types of Child Support Agreements:

- Binding Child Support Agreements
- Limited Child Support Agreements

Parents cannot enter into a Binding Child Support Agreement unless they have each received independent legal advice before signing the Agreement. A limited Child Support Agreement is easier to change than a Binding Child Support Agreement.

Importantly, all Child Support Agreements made prior to 1 July 2008 will be reviewed by the CSA, and the CSA will decide whether the Agreement is binding on the parties.

You can obtain more information about the changes to the child support scheme from the [December 2006](#) edition of our newsletter.

Variation of Child Support Agreements

If circumstances change, parents can negotiate and make a new Child Support Agreement.

A parent can also apply to a court for orders to vary an existing Child Support Agreement. The court will generally only vary a Child Support Agreement if it is satisfied that there has been a significant change in circumstances. It is not sufficient that one parent has changed their mind and no longer wants to be bound by the agreement.

Setting aside Child Support Agreements

A parent can apply to the court to set aside a Binding Child Support Agreement if the agreement was obtained by fraud or undue influence.

For example, if a parent makes a false statement about their income to the other parent during negotiations about the Child Support Agreement, the innocent party can apply to the court to have the Agreement set aside.

Similarly, if one party places illegitimate pressure on the other party to enter into a Child Support Agreement, the innocent party can ask the court to set aside the agreement. An example of illegitimate pressure is threats of violence.