

## Child Support – what you need to know

Family law principles recognise that both parents of a child should be financially responsible for his or her care, regardless of the parents' marital status, past or present relationships or involvement in the child's life.

The child support scheme in Australia is regulated through various laws and administered by the Department of Human Services (Child Support) ('DHS Child Support').

Child support payments may constitute regular or periodic contributions by one parent of a child to the other parent or carer, for the child's ongoing welfare and maintenance. The amount of child support paid may be determined by administrative assessment through DHS Child Support or a child support agreement made between the child's parents.

### **Applying for an administrative assessment**

An application for an administrative assessment may be made to DHS Child Support by the primary carer of a child or children. Child support is payable with respect to all children until they reach 18 years of age or until they complete their secondary schooling if they are turning 18 years during that year.

DHS Child Support must be convinced that the applicant and paying parent are in fact the parents of the child. In many cases, parentage will be accepted by providing documentation such as a birth certificate. Adopted children and children from previous same sex relationships are included in the child support scheme as are children born through artificial conception. In these cases, there are general assumptions made with respect to who the child's parents are. These presumptions may be challenged through a court and / or DNA testing.

Challenges to parentage can be complex and emotionally charged – if disputes arise it is recommended that legal advice be obtained as soon as possible.

### **What factors are considered when calculating child support?**

DHS Child Support uses a complex formula to calculate child support payments with consideration of the following factors:

- the length of time the child spends with each parent / carer;
- the costs of raising children relative to specific age ranges and the capacity for the parents to meet those costs;
- the respective income of each parent;
- each parent's responsibility for supporting other children;

- the age of the child and other children in the care of each parent;
- the basic living needs of each parent.

### **Paying child support**

Payments for child support can be made privately between the parties or collected and distributed by DHS Child Support. This applies whether payments have been calculated through an administrative assessment or are paid under a child support agreement.

DHS Child Support has the power to enforce payments of child support. This is of great assistance where the paying parent has previously been unreliable in meeting child support commitments or has a history of violence.

If necessary, payments may be enforced by debiting a bank account held in the payer's sole name, taking payments from a tax refund due to the payer or commencing debt recovery proceedings in court.

### **Challenging an administrative assessment**

Sometimes a child support assessment may not fully consider the special or unusual needs of a child or the circumstances of a parent or carer. Alternatively, a carer or payer's circumstances may change, either short-term or permanently, resulting in financial hardship. This may be the result of a job loss or illness. In such cases, a parent or carer may apply for a reassessment of child support.

Once a review is completed, the applicant is notified in writing of any new assessment. If a person is unhappy with the decision reached by DHS Child Support, an objection may be lodged within 28 days of receiving the revised assessment. If, after a review is conducted, the applicant is still dissatisfied with the outcome, there may be grounds for appealing the decision through a specialist division of the Administrative Appeals Tribunal.

If you think a DHS Child Support assessment has been calculated incorrectly or that your personal and financial circumstances have not been fully considered, our family law team can assist in having the assessment reviewed or lodging an objection.

### **What are child support agreements?**

Rather than have child support assessed through DHS Child Support, parents may enter a child support agreement. This is a written agreement made between the parents which sets out their agreed obligations regarding child support, the type, amount and frequency of payments. Payments may include regular ongoing contributions, lump sum payments or periodic payments for specific items such as school fees or health insurance.

Child support agreements may be binding or limited.

A **binding child support agreement** must be in writing and signed by both parties. The parties must receive independent legal advice and the agreement must include a statement signed by the parties' respective lawyers to this effect. These agreements can only be varied mutually between both parties or alternatively and in limited circumstances, an order of the Family Court.

Parties wishing to enter a **limited child support agreement** must first have an administrative assessment conducted. This is known as a 'notional assessment' and may be used by the parties as a 'comparison' between what would otherwise be paid by assessment should the agreement not be in place. The agreement must provide for the same or greater child support than the notional assessment.

Whilst legal advice is mandatory only for binding child support agreements, we recommend advice is obtained before entering any agreement for child support.

### **What about adult children?**

Child maintenance may be payable in certain circumstances for children over the age of 18 years in full-time study, or who have a physical or mental disability.

The *Family Law Act 1975* makes provision for child maintenance orders for adult children if the court considers such payments are either necessary to complete the child's education or justified due to the child suffering from a mental or physical disability.

In such cases the financial and special needs of the child will be assessed and, if relevant, orders made for financial contributions considered appropriate in the circumstances. There are a range of factors that the court must consider in its approach in determining whether maintenance is payable.

### **Conclusion**

Child support and maintenance issues can become contentious and are often charged with emotion and frustration. The principle that both parents should contribute financially to their child's upbringing is often overlooked and it is during this time that common sense and the guidance of an experienced family lawyer will benefit all parties.

Our family law team can assist in lodging a child support application with DHS Child Support, check whether child support payments have been correctly assessed and, if necessary, object to an assessment, or prepare and negotiate a child support agreement.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9459 5764 or email [admin@rtllegal.com.au](mailto:admin@rtllegal.com.au).