

## Child Support

The payment of child support in Australia is governed by the Child Support Agency, a Commonwealth Government Agency established in 1989 to oversee the assessment and collection of child support for the children of separated families.

### ***How much Child Support do I have to pay?***

The level of Child Support payable for the children of separated parents is determined by a formula set out in Child Support Legislation and in essence, is determined by 4 major factors:

1. the income of the paying parent,
2. the income of the parent in whose care the children reside
3. the amount of time the child or children spend in each parent's care.
4. the ages of the children.

For guidance on the approximate level of Child Support payable by, or to, you having regard to the particular circumstances of your case you can obtain a calculation from the self-help tools found on the Child Support Agency's website [www.csa.gov.au](http://www.csa.gov.au)

It is important that you understand that the Child Support Agency Formula does **not** apply to every case and may not be applicable to you and your family should any of the following circumstances apply:

- a) Your capacity to provide financial support is significantly reduced because of the high cost of caring for the children, your child has **special needs**, you have commitments to support another child, or a legal duty to support another person;
- b) You face high costs in enabling you to spend time with, or communicating with your child;
- c) Your capacity to provide financial support is significantly reduced because of the responsibility to maintain another child;
- d) It would be unjust and inequitable to apply the Child Support Formula having regard to the income, earning capacity, property and financial resources of the child or because of the income, property, financial resources either yourself or your former spouse.

In these circumstances you may be required to negotiate a different level of child support with the other parent or, if that is not possible, to seek a "Departure Order" through the Child Support Agency and, should that not be possible, by way of an Appeal to the Social Security Appeals Tribunal (SSAT) or a Family Law Court.

For advice in relation to your rights, entitlements and obligations with respect to child support please contact one of our Family Law Partners

### ***What if my children are aged over 18?***

Generally speaking, the obligation to pay child support ends upon the child's 18th birthday or upon the child completing his or her secondary education in the year of the child's 18th birthday.

Except in limited circumstances, the Child Support Agency cannot make assessments for children beyond their 18<sup>th</sup> birthdays.

However, the Family Law Courts have the power to make orders for the payment of maintenance for children over 18, but only where the court is satisfied that the provision of that maintenance is necessary:

- a) To enable that child to complete his or her education (including tertiary education but usually limited to an undergraduate degree); or
- b) Because of the mental or physical disability of the child.

This can result in parents being ordered to pay for the benefit of their adult children (over the age of 18) University tuition fees, books and stationery, and in some circumstances more substantial forms of maintenance such as the provision of motor vehicles, payment of HECS debts and expensive medical costs.

### ***Step-Parents' duty to maintain children***

In some circumstances Step-Parents can be ordered by the Family Court or the Federal Magistrates Court to provide maintenance for their step children.

However in the absence of a Court Order to this effect, step-parents have **no** duty to maintain a child. Usually that duty and obligation falls to the child's biological parents.

In considering whether to make an order requiring a step-parent to maintain a child, the court considering the matter must have regard to, among other things:

- a) The ability of the biological parents to contribute towards the maintenance of the child;
- b) The length and circumstances of the marriage;
- c) The relationship that has existed between the step-parent and child;
- d) The arrangements that have existed for the maintenance of the child (e.g. is there a pattern of the step-parent having supported the child in the recent past?);
- e) Any special circumstances, which if not taken into account, would result in injustice or undue hardship to any person.

If the court considers it appropriate that the step-parent make a financial contribution towards the financial support of the child, a range of matters are taken into account including the extent to which the parents of the child are able to fulfil their primary duty to maintain the child as well as the income and earning capacity, property and financial resources of each of the biological parents of the child and the child's step parent.

For further advice on child support and any other family law issues, please contact our Family Law partners:

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