Family Law

Plain English Guide on Child Support

When parents separate, proper arrangements need to be made for the financial support of their children. The obligations of parents to provide for their children are governed by the Child Support Scheme. This Plain English Guide sets out some of the more commonly asked questions regarding child support.

What is child support?

Child support means financial support for children under the Child Support (Assessment) Act. Child Support is most commonly provided by way of regular periodic payments, but also includes financial support by way of lump sum payment, by way of payment of specific expenses or by way of transfer or settlement of property.

What children are eligible for child support?

Child support is payable for all children living in Australia whose parents have separated, whether or not the parents were married to each other. If a child turns 18 during their last year at school then that child is eligible for child support until they complete the school year. Normally both parents must also be living in Australia, but there are arrangements with some other countries for collection and payment of child support if one of the parents or the child is living in that country. A child who is married or living in a de facto relationship is not eligible for child support.

Who has to pay child support?

Both parents of the child are liable to pay child support depending on their circumstances. “Parents” includes biological parents, adoptive parents and people who have become parents as a result of an artificial conception procedure.

Who can apply for child support?

A parent who has the care of a child for at least part of the time and who is not living with the other parent can apply for child support. In some circumstances another person having the care of a child can apply for child support.

How do I apply for child support?

An application for child support is made to the Department of Human Services (DOHS), which administers the Child Support Scheme. An application can be made by completing a form which is available from Centrelink. An application can also be made online through the DOHS website: www.servicesaustralia.gov.au/individuals/separated-parents. Provided the formal requirements for an application are satisfied, DOHS will make an administrative assessment of child support and send details of the assessment to both parents.

How is child support calculated?

The amount of child support that must be paid is calculated in accordance with a complex formula. The formula recognises the obligation of both parents to contribute to the financial support of their children to the extent that they are able to do so. Research on the costs of raising children is used to work out what is the likely cost involved in caring for the particular child.

The formula takes into account the income of each parent, after deducting an amount for the support of that parent and other dependent children. The formula also takes into account the time that the child spends with each parent. An online child support estimator, manual worksheets and examples of how the formula works can be found on the DOHS website.

Can parents make their own agreement about child support?

It is not compulsory to have an administrative assessment of child support. Parents can have their own arrangements in relation to child support. These may be private arrangements. Alternatively, the parents may have a written child support agreement registered with the DOHS.

What if the administrative assessment is unfair?

Sometimes the formula produces a result which is not appropriate. This can occur if a parent has entered into an arrangement to minimise their taxable income, or if a parent has lost their job since the assessment was made. The assessment might be unfair because the child has special needs or because the child is attending a private school. In these and other cases it is possible to ask the Child Support Agency to change the assessment. The DOHS will consider what each parent has to say and then decide whether the assessment should be changed.

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How is child support collected?

DOHS prefers that parents make their own arrangements for the payment of child support. If this occurs then it is important that there is a proper record of what is paid to avoid any dispute. For example, child support can be deposited directly by the payer into the payee's bank account. If the parent liable to pay child support will not pay voluntarily, or if the parents prefer, payments can be collected by the DOHS. The DOHS can require the employer of a parent who does not voluntarily pay child support to deduct payments from that parent's salary or wages.

What if I am unhappy with a decision made by the DOHS?

There are procedures available to challenge a decision made by the DOHS. Depending on the nature of the decision there may be an internal review process or a right to apply to the Social Security Appeals Tribunal for a review of the DOHS's decision. In some circumstances a person dissatisfied with a decision of the DOHS can apply to a court. Your lawyer can advise you as to the appropriate action in your case.

What if there is a dispute about parentage of a child?

If there is a dispute about whether a person is a parent of a child and therefore liable to pay child support, a court can make an order for parentage testing. If a person who has paid child support turns out not to be the child's parent, then the court can order repayment of the child support that has been paid.

How can Mills Oakley help you?

Mills Oakley's family law team can advise you about issues relating to child support. In particular they can:

- Advise you how much child support you should receive or pay;
- Explain your child support assessment;
- Advise you as to your rights if you are dissatisfied with your child support assessment;
- Assist you in preparing applications to the DOHS for reconsideration of your assessment;
- Help you prepare and register a child support agreement; and,
- Represent you in court proceedings concerning child support.

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