Child support

In Australia, parents bear the responsibility for financial support for their children. This responsibility is met by parents either having their children live with them or, following separation, by providing financial child support to the parent or other family member with whom the children live. Parents are liable to support their children whether or not the parents are or were married, or in a de facto relationship, including a same-sex relationship. The responsibility for financial support still arises even if the parents were never in a relationship or if one or both parents never intended to have a child.

Parents are responsible for financially supporting their children until they are at least 18 years of age, or self-supporting, and in some circumstances that period can be extended.

What is child support?

Child support refers to the financial support of children. The parent looking after the children can apply for child support. For the purposes of child support the parent with whom children live is referred to as the payee parent. The parent required to provide financial support is referred to as the payer parent.

A payer parent is required to pay child support even if their income is very low. For example, a payer parent in receipt of a Centrelink payment is still required to pay a small amount of child support.

You can apply for child support at any time after you have separated from the other parent of the child/children. Be aware though that child support cannot be backdated to a date earlier than the date an application for child support was first received by the Department of Human Services Child Support.

The amount you receive is unlikely to be affected if you enter a new relationship or remarry, although it will be affected if either you or the payer parent have more children.
How is child support worked out?

Most people have heard of the Child Support Agency. In 2012 the Agency became part of the Department of Human Services and the title was shortened to Child Support.

Child Support (CS) is a government agency helping people work out and collect child support. You can apply to CS for it to calculate how much child support should be paid to you. CS uses a formula to work out how much child support should be paid and by which parent.

The formula is based on:

- Income.
- Care of children: the amount of actual time the children spend with each parent.
- The costs of raising children (according to Australian research), shared by the parents depending on their incomes.

Applications to change a child support assessment

If you do not believe the formula accurately reflects the other parent’s ability to pay child support, then you can seek a change of assessment which is a review of the decision from CS. To do this you will need to submit an application for Change of Assessment in Special Circumstances. You can obtain the application form by contacting Child Support directly and requesting a form, or from the Child Support website.

If you lodge a Change of Assessment application you will be required to set out the reasons that you say the assessment should be changed and disclose details of your own financial circumstances. The payer parent will be provided with a copy of your application. Your application will be determined by CS after the other parent has had an opportunity to reply and you have both been interviewed.

Objections to a child support decision

If you believe a decision by CS in relation to your case is incorrect (including if an application for a change of assessment has been unsuccessful) you are able to object to that decision in writing. You need to explain the details of the decision you are objecting to and why you think CS’s decision is incorrect. CS will then make a decision about your objection. While your objection is being considered, the original decision by CS still applies unless you seek a stay order.
Stay orders

A stay order is a court order that suspends a child support assessment. An application for a stay order may only be made in circumstances when there are either proceedings before the court or certain administrative review proceedings are under way. You should be aware that applications for a stay must be made to a court with jurisdiction under the Child Support legislation and can be costly to seek. A stay application is also likely to take time to obtain and this means that a decision by Child Support about your objection is often likely to be made before a stay is obtained in court. Further, if your objection has been unsuccessful and you are the payer parent, your liability for the entire stay period will fall due and you may quickly incur late payment penalties in addition to any unpaid child support amounts.

Application to the Administrative Appeals Tribunal

If you do not agree with the outcome of your objection you may apply to the Administrative Appeals Tribunal (AAT) for a review of the objection decision. Only objection decisions made by CS after 1 January 2007 can be appealed to the AAT.

Federal Circuit Court appeals

The only review mechanism available from a decision of the AAT is an appeal to the Federal Circuit Court on a point of law. There are substantial costs implications for anyone considering an appeal if they are unsuccessful, so obtaining legal advice before lodging an appeal is essential.

Collection of child support

CS can collect the child support money for you. If the other parent fails to pay child support CS can do a number of things to enforce payment, such as deducting money from their wages and intercepting any tax return that may be due to them at the end of the financial year. You will need to directly request that CS collect the money for you. If you do not do this they will register your case as private collect and you will be expected to collect the child support monies yourself. However, even if you nominate to privately collect initially, you can always contact CS and request to change to CS collect. In instances where the payer parent is in significant child support arrears you can request that CS collect three months worth of those arrears for you at the time you opt in to a CS collect arrangement. In exceptional circumstances it may be possible to request that CS collect up to nine months worth of child support arrears, however the exceptions are strictly applied and in most circumstances it is more likely that the three month rule will apply. If there are arrears remaining from a private collect period you will need to pursue this money yourself. You should obtain legal advice if you are in this position.
There are two types of child support agreement:

- **Binding agreement**
  
  A binding agreement has to be in writing and signed by both parents, who have had independent legal advice before they sign. It is a long-term agreement which can only be ended by a new agreement or a court order. As both parties will have had independent legal advice prior to entering into a binding agreement, a court order to change a binding agreement could be difficult to obtain. As from 1 July 2018 the agreement may be suspended when the parent receiving child support is no longer an eligible carer of the child.

- **Limited agreement**
  
  A limited agreement is a less formal agreement between the parents for the payment of child support, and there must already be a formula assessment in place for the child/children. Limited agreements are easier to end than a binding agreement and will run for no more than three years, at which time the parents can either enter into a new limited agreement or the case will revert to the child support assessment with CS.

If you are receiving payments from Centrelink, you cannot agree to accept less child support than the amount determined by CS.

As previously noted, CS encourages people to reach agreement about child support and arrange their own collection. If you do not believe this is possible in your circumstances because you are fearful of your partner or for any other reason, you should advise Child Support that you would like them to assess and collect your child support.
What does Centrelink have to do with child support?

If you apply for a parenting payment you will be required by Centrelink to seek child support from the other parent, unless there are exceptional circumstances, such as domestic violence. If an exceptional circumstance does not apply to your case and you fail to seek child support, then your family tax payments will be reduced. If you find yourself in this situation it is important to obtain legal advice as soon as possible as strict time limits apply. If you do not meet the time limits and there is a lengthy delay, without reasonable explanation, then Centrelink may elect to not back-pay any reduced Centrelink payments.

What if I am frightened to collect child support?

If you are escaping domestic violence and you are fearful about applying for child support/maintenance, then you should speak to a social worker at Centrelink about applying for an exemption.

What if the father refuses to admit parentage of my child?

If you apply for a birth certificate and/or child support and the father of your child refuses to admit that he is the parent there are a number of steps you can take.

If you attempt to register your child’s birth and the other parent refuses to sign the birth registration statement you should still provide all the details to Births, Deaths and Marriages. The Registrar will then contact the father and confirm whether he admits parentage. If he does, then he can be added to your child’s birth certificate, if not then a record will be kept with the registry for future reference (particularly if a DNA parentage test report or court order is later provided).

You will also need to make an application for child support. Once you apply, CS will review your application. If you and the father were living together or married at the time of conception, then an automatic presumption of parentage will apply and the father will be assessed to pay child support. If no presumption applies then CS will contact the father to see whether he admits to being a parent. At this stage if the father denies parentage then CS will refuse your child support application. You will then need to seek legal advice so that you can obtain assistance to either seek court orders declaring parentage or undergo a DNA parentage test. If the father refuses to undergo parentage testing the court can draw inferences from that refusal. You can obtain legal advice from Legal Aid, a community legal centre or a private solicitor.
What about children over 18 years of age?

The Family Court, Magistrates Court or Federal Circuit Court can make an order for maintenance for children over 18 years of age if the support is necessary to complete the children's education (including tertiary education) or if the child has an intellectual and/or physical disability. This is called an application for Adult Child Maintenance. Either a parent or the child can make the application to the court. An order for Adult Child Maintenance can be quite difficult and costly to obtain and it is important that you receive legal advice before commencing any proceedings.

The legislation requires the court to look at the earning capacity and expenses of both the parents and the child separately. This can mean that if a child has had to move to attend University and lives independently then a court will expect both parents to be contributing financially towards the child’s expenses whilst they complete their studies. The court will expect the adult child to be meeting some of the costs of their own education, and usually the child is expected to have part-time or casual employment.

An application for maintenance of a child with a disability can be particularly difficult, as an applicant will need to establish that the child is profoundly disabled and without the capacity to self-support or contribute to their own costs. Comprehensive medical evidence is required and it is not sufficient to simply rely on a Centrelink report obtained for the purposes of the Disability Support pension. If a court does make an order for adult child maintenance then the order can then be lodged with Child Support for collection, and enforcement if necessary.

Finally, in certain circumstances parents and adult children are able to successfully negotiate adult child maintenance between them. As Child Support cannot enforce a private agreement for a child over 18 it is advisable that the parties file an application for consent orders with the court so that a final order is made. This will then enable the agreement to be registered as an order with Child Support for collection.

If you have a child support assessment with the Child Support Agency and your child turns 18 and is still attending secondary school, you can apply for an extension of your child support assessment to be paid until the last day of the school year. You can also apply to extend a registered child support agreement in these circumstances. You must apply before the child turns 18, unless there are special circumstances.

As Higher Education Contribution Scheme (HECS) fees can usually be paid after the child is earning an income, the courts have excluded them from any orders for adult child maintenance.
Can I get assistance while I am pregnant?

It is possible to get a court order requiring the father to contribute to your out-of-pocket child-bearing expenses.

During your pregnancy and any time up to 12 months after you have given birth, you can apply to the court for an order that the other parent contribute towards the following costs:

- The medical expenses in relation to your pregnancy and the birth.
- Your maintenance costs if you were unable to support yourself because of the pregnancy.

The costs referred to above apply only to the period two months before and three months after the birth of your child.

It is possible to seek an order for child-bearing expenses outside of the time limit but it is not an automatic right. Any woman considering making an application for child-bearing expenses should seek legal advice, this is especially the case now that women are often entitled to paid maternity leave and/or government payments (and their out-of-pocket expenses are minimised).