



## What is 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.\* 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.

\*A de facto relationship is defined in section 4AA of the [Family Law Act 1975](#). The law requires that you and your former partner had a relationship as a couple living together on a genuine domestic basis. A de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex.

Child support is a payment made by one parent to the other to help with the cost of looking after children. In some situations, it may be paid by one or both parents to another person who is looking after the children. Child support is usually paid until a child turns 18 but there are some situations where it may be stopped early, including if a child becomes self-sufficient; marries; or enters into a de-facto relationship.

Parents can reach agreement about the payment of child support privately, or they can apply to Services Australia (Child Support) for an administrative assessment. To be eligible for a child support assessment you must: meet residence rules, which requires one parent to be living in Australia; and be the legal parent or non-parent carer of the child/ren.

Services Australia (Child Support) ('CS') will only issue a child support assessment if you can prove the paying parent is a biological, adoptive or same-sex parent.

### Can child support be paid privately between parents?

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Both parents can agree to have child support collected privately, for example, one parent pays child support into the other parent's bank account. This does not have to be in writing.

Private collection can work well if both parents complete tax returns and where there are no issues of family violence including financial abuse.

If private payments fall behind, stop, or you no longer agree on the amount of child support payable, you should get legal advice as soon as possible.

If you are the parent in receipt of child support, and are experiencing difficulties with the paying parent, you can contact Services Australia (Child Support) ("CS") and ask them to collect the child support instead. CS can take over collection of future payments and any outstanding payments generally going back 3 months.

### Can Services Australia (Child Support) collect child support on behalf of parents?

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Services Australia (Child Support) ("CS") is responsible for collecting and enforcing payments of child support.

CS can collect the child support money on your behalf from the other parent.

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 a "private collection" case 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 at a later stage to request their assistance to collect the money.

If the other parent fails to pay child support CS can do a number of things to enforce payment, such as deducting money from the other parent's wages and intercepting any tax return that may be due to them at the end of the financial year.

If CS is responsible for collecting your child support, they will be responsible for recovering outstanding payments and debts.

If you were collecting child support privately, then you will have to try and recovery any outstanding money from the other parent yourself.

# Private agreements

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If parents agree, they can make a legally enforceable agreement about the amount, frequency and method of child support payments after separation. If you are not sure how much child support you are entitled to, you can use the amount that Services Australia (Child Support) ("CS") would assess as a guide. You can get this figure either by ringing CS who will work it out for you, or by using the child support estimator on the CS website. You should get legal advice prior to entering into a private agreement.

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

You must register your agreement with CS if you would like their assistance to collect your child support.

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 CS that you would like them to assess and collect your child support.

## Types of private child support agreements

### 1. Binding agreement

A binding agreement must 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 may be difficult to obtain. Agreements entered into after 1 July 2018 may be suspended when the parent receiving child support is no longer an eligible carer of the child.

### 2. Limited agreement

A limited agreement is a less formal agreement between the parents for the payment of child support, and there must already be an assessment in place for the child/ren. 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.

# What does Centrelink have to do with child support?

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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?

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If you are escaping domestic violence and you are fearful about applying for child support, 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?

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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, Services Australia (Child Support) ("CS") will review your application. If you and the father were married at the time of conception (or the child was born within 44 to 20 weeks of when the mother and father lived together) then an automatic presumption of parentage will apply, and the father will be assessed to pay child support.

If no presumption applies, CS will contact the father to see whether he admits to being the parent. If the father denies parentage, 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.

### What about children over 18 years of age?

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If a child or children over 18 can't support themselves, a court can make an order for parents to continue to provide financial support because they:

- are completing their secondary or tertiary education (e.g. secondary school, TAFE, university, apprenticeship)
- have a mental or physical disability.

This is called adult child maintenance.

If a child turns 18 while completing their final year of secondary school, the parent receiving payments can apply to the Services Australia (Child Support) to extend support until the end of the school year. The application needs to be made before the child turns 18 and can be made by a parent or a child.

The amount of maintenance to be paid will depend on the child's necessary expenses, each parent's financial position and their situation. If you find yourself in this position, we recommend that you obtain legal advice.

Parents can make their own agreement or file consent orders in court (where both parents agree to the orders). If an agreement can't be reached, the court can decide the amount to be paid. A court order for ongoing payments can be registered for collection with Services Australia (Child Support) and can be paid to the parent or the child.

### Can I get financial assistance in relation to my pregnancy and childbirth?

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It is possible to get a court order requiring the father to contribute to your out-of-pocket child-bearing expenses, if you are not married to the father.

This is separate to child support and involves a private application to the Federal Circuit and Family Court of Australia. As a mother, you are entitled to financial support (childbirth maintenance) from the child's father for some living and medical expenses from 2 months before a child is born until 3 months after the birth.

As a mother, you are also entitled to childbirth maintenance if you had to stop working early in the pregnancy due to a medical condition. In this case, the entitlement starts from the day you stop working.

If the child is stillborn or dies during childbirth, then, if you are the mother, you can claim some expenses for the child's funeral. If the mother dies and the death is a result of the pregnancy or birth the mother's family can make a claim for some funeral expenses. The application must be filed within 12 months of the birth of your child.

# Calculating child support

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Services Australia (Child Support) ("CS") uses a formula to work out how much child support you should pay or receive. The formula takes into account:

- The income of each parent and the combined income of both parents;
- The care arrangements for the child/ren being the amount of actual time the child/ren spend with each parent;
- The number of children;
- The child/ren's age; and
- The costs of raising children (based on Australian research).

The amount of child support to be paid may change depending on how much time the child spends with each parent. CS will take into account any other dependent children when calculating your child support.

## Change of assessment and objections to assessment

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### Change of assessment

You should tell Services Australia (Child Support) ("CS") if your circumstances change. The amount of child support payable may be varied to reflect changes to your situation including if the amount of care you provide for your child/ren changes, if you have a child with another partner.

You can also apply to vary your child support assessments in special circumstances.

You can apply for a Change of Assessment in Special Circumstances, which is a review of the decision from CS. You should seek legal advice before applying for a change of assessment.

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 paying parent will be provided with a copy of your application. Your application will be determined by CS after the paying parent has had an opportunity to reply and you have both been interviewed. The outcome may have an impact on the amount of Centrelink benefit you receive.



## Objections to assessment

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 can 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. If you do not agree with the CS's decision to your objection, you may apply to the Administrative Appeals Tribunal (AAT) – Social Services & Child Support (SSCS) division for a review of the objection decision.

If you don't agree with the first decision, you may be able to apply to the General Division of the AAT for second review (provided the decision relates to percentage of child's care) or you may be able to appeal the decision to the Federal Circuit and Family Court of Australia (FCFCoA).

While your objection is being considered, the original decision by CS will apply unless you seek a stay order. If you are appealing a decision, you may need to apply for a stay order (for example, if you can't afford to keep paying your child support). You should seek legal advice before applying for a stay order.

## Federal Circuit and Family Court of Australia appeals

The review mechanism available from a decision of the SSCS division is an appeal to the Federal Circuit and Family Court of Australia on a point of law (not an error about the facts). You should seek legal advice before lodging an appeal. You must file an appeal from a decision of the SSCS division within 28 days of receiving a written statement of reasons for the decision.