

Differences between a Binding Child Support Agreement and a Limited Child Support Agreement

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Under Australian law, parents and eligible carers are financially responsible for their children until they are 18 years old. In some circumstances, parents or carers may also be held financially responsible for their children until they are older than this. When parents separate, one parent may be liable to pay child support to the other party. There are two types of child support agreement; binding and limited. This blog explores the differences between the two.

When will I need to pay child support?

As a result of a Child Support Agency administrative assessment

An obligation to pay child support may arise out of an administrative assessment by the federal Department of Human Services – Child Support ("the Child Support Agency").

Administrative assessments are made by the Child Support Agency after an application is made by one party. They are calculated based upon a formula, taking into account factors such as the income of both parents, the amount of income required for self-support and the amount of time the child or children spend with each parent.

Contributions will no longer be required when your child turns 18 unless they are still in high school and an application is made to extend child support payments until the end of that year.

There are also options to challenge an assessment. You can read more about that in our previous blog, “Challenging a child support assessment”.

Entering into a Child Support Agreement with the other parent

Alternatively, separated parents may choose to enter into a private agreement for payment of child support.

Child support agreements are independent agreements made between parents or eligible carers for the financial contribution of one party to the other for the upbringing of a child or children.

Two types of Child Support Agreements

The two types of private child support agreements are Binding Child Support Agreements and Limited Child Support Agreements.

Generally, both kinds of agreement will require contributions up until your child is 18.

Binding Child Support Agreements

Binding Child Support Agreements require each party to have sought independent legal advice prior to the agreement being made and do not require a child support assessment to already be in place. They also have the following features:

- They must be in writing;
- The payment can be any amount that the parties agree upon;
- They may be terminated if a new binding agreement is made, that either replaces or terminates the existing agreement;
- Payments can be made in any of the following ways, provided that the parties agree:
    - Privately; or
    - Via the Child Support Agency, who can collect and then distribute the payment.

Limited Child Support Agreements

A Limited Child Support Agreement primarily differs from a Binding Child Support Agreement in that they require an existing child support assessment to already be in place, but they do not require that the parties receive independent legal advice. They also have the following features

- They must be for a value equal to or greater than the assessed amount by the Child Support Agency;
- They may be terminated by only one party, as opposed to by agreement as required under a Binding Child Support Agreement, in the following circumstances:

- After three years if either party wishes; or
- Sooner, if one party's assessed income changes by more than 15% and notice is given to the other party;

- They only take effect after being registered by the Child Support Agency, as opposed to Binding Child Support Agreements which takes effect the day it is finalised;
- They are generally considered to be more flexible and, in certain circumstances, may be a more cost-effective option.

Adult child maintenance

A party may apply to have child support continue after the child turns 17. This is known as "adult child maintenance" and will be available only in circumstances where the child requires financial support to complete their education or because of reasons of mental or physical disability.

You are generally only required to pay adult child maintenance as long as the circumstance relied upon exist. For example, your obligation will generally cease if your child discontinues their education.

How a family lawyer can help

Smith Family Law is able to assist you in understanding your child support obligations, provide advice for altering your obligations and ensure your legal entitlements are protected.

Contacting Smith Family Law

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