

Organising child support and care arrangements for your children

Parents are responsible for supporting their children. If you are together, separated or if you never lived together, your obligation to support your children continues.

This fact sheet has information for both parents, whether you pay or receive child support. If the children live with someone other than a parent, that non-parent/carer can also apply for child support.

You will find information here on:

- the child support system
- how child support is collected and transferred
- how to organise or change care arrangements for the children. This will affect your child support
- how Legal Aid can help.

How does the child support formula work?

When working out your child support payment, the Child Support Agency looks at:

- both parents' income
- if you are supporting other children
- the ages and costs of raising children (based on the combined income of the parents)
- the amount of time you care for the children (your 'care levels').

The Child Support Agency will make a child support assessment based on these and other factors. This may also affect your Family Tax Benefit.

Write down your phone calls with the Child Support Agency and get help with letters if you do not understand them. If you think that the amount of child support the Child Support Agency have decided upon is not correct or fair, get legal advice. There are ways to change an assessment. Legal Aid or a community legal centre can help.

The amount of child support that you pay or receive may also affect your Family Tax Benefit.

For more information see the Legal Aid fact sheet 'Child support, Family Tax Benefit and your child care levels'.

From 1 July 2009, the child support scheme will include children from a previous same sex relationship.

What is a child support agreement?

Instead of using the Child Support formula assessment, you can reach your own agreement with the other parent. The agreement can be about how much, and in what form, child support should be transferred. You should always get legal advice before making a child support agreement.

There are two legal types of child support agreements.

Binding child support agreements

A binding agreement is a written and signed agreement that has been made after each parent has received legal advice. Your lawyer must attach a Certificate of Independent Legal Advice to the binding child support agreement after giving you legal advice.

You must get legal advice from a different lawyer than the other parent.

You can make this agreement for any child support amount, including amounts that are less than the Child Support Agency would calculate. If you agree to receive less child support, your:

- Centrelink benefit will not be increased to make up for the smaller child support amount you have agreed to
- Family Tax Benefit (A) will be paid at the same rate as if you were receiving a Child Support Agency calculated amount.

You can only end a binding agreement by making a new one, or by going to court. The court will need to agree to end the binding agreement.

Limited child support agreements

A limited agreement can only be made if there is a child support formula assessment already in place with the Child Support Agency. The child support amount in your agreement must be equal to or more than the Child Support Agency formula amount. The law does not say you must get legal advice before making a limited child support agreement, however it is highly recommended that you do. It is best to do this before making any child support agreement.

The court can find that a child support agreement is not legal if it was made using threats or pressure.

How is child support transferred between each parent (or carer)?

The Child Support Agency collects and transfers child support payments between each parent, or to non-parent carers.

Child support payments can also be transferred privately between yourselves if both parents agree to do this. You can collect and transfer child support between yourselves, whether you have a Child Support Agency formula assessment or a private child support agreement.

Which option should I choose?

If the payer:

- does not have a good payment history, or
- is not likely to pay

it may be better for the Child Support Agency to collect your child support.

Transferring child support between yourselves is also not recommended if:

- there has been family violence
- tax returns have not been lodged or are usually lodged very late
- the other parents' income used in the assessment may not be correct. The assessment can be corrected later on and you may find you have not have been paid the full child support amount. The Child Support Agency cannot collect these amounts owed from a past period when a private collection arrangement was in place. You will be responsible for recovering this money.

If you have a private arrangement and child support payments are not made, the Child Support Agency can be asked to start collecting the payments. If this applies to you, act quickly. The Child Support Agency can only collect payments owed to you ('arrear') for the past three months. In special cases, you may receive arrears up to nine months.

If the payer is likely to pay on time and pay the right amount, then using either option may be suitable for you. Get legal advice before entering into a private arrangement.

How do I make arrangements for the children's care?

Your child support payments and Family Tax Benefit will be affected by the amount of care you provide for the children (your 'care levels'). For more information see the Legal Aid fact sheet 'Child support, Family Tax Benefit and child care levels'. Get legal advice about your situation.

Always focus on your children's best interests when making care arrangements with the other parent.

These are the ways your childcare arrangements can be set out:

Parenting plans

A parenting plan is a written, signed and dated agreement between both parents that sets out parenting arrangements for the children. The court can find that a parenting plan is not legal if it was made using threats or pressure. Legal Aid can give you advice about how to make a parenting plan and answer other questions.

A parenting plan can be changed if both parents agree to this, by making a new one. If you do not agree on the changes, get help from Legal Aid, a community legal centre or a family dispute resolution practitioner. If there has been family violence get legal and other help.

Consent orders

A consent order is a written agreement made between both parents that is registered with the court. It then has the same force as any court order. A parenting consent order can be changed by another order, or by a new parenting plan.

Court orders when you cannot agree

If you cannot reach agreement with the other parent about parenting arrangements you may need to go to court for a parenting order. In most cases you will need to try family dispute resolution first.

Once you have a court order in place, there are penalties for not obeying the order (even if it is a consent order). Get legal advice from Legal Aid or a community legal centre. Legal Aid may also be able to provide family dispute resolution, legal representation or information.

If you have parenting orders or a parenting plan, the Child Support Agency will base your child support on these.

What do I do when

- my care arrangements change, or
- the care provided is different to that set out in a parenting plan or order?

Tell the Child Support Agency immediately about any changes in the care arrangements for the children. If you and the other parent do not agree about the level of care that is being provided for the children, the Child Support Agency can make that decision.

In making a decision about the level of care to be used in an assessment, the Child Support Agency will consider

- any parenting plan or parenting order
- any previous agreement about care or pattern of care that is different to the plan or order
- information provided by the parents or third parties.

If you disagree with the decision, you should get legal advice. You can lodge an 'objection' to the decision. You should do this within 28 days. You may need to try family dispute resolution with the other parent. Speak to Legal Aid or a community legal centre about this first. If there has been family violence always tell your lawyer and the family dispute resolution service.

Where to get help

For information on how child support and Family Tax Benefit are affected by:

- your income
- other family
- care arrangements and levels of care
- child support agreements

see the Legal Aid fact sheet 'Child support, Family Tax Benefit and your child care levels'.

Contact details:

Legal Aid NSW Child Support Service

You need to make an appointment in advance by telephoning 9633 9916 for the Sydney metropolitan area or freecall 1800 451 784 for country callers.

For legal information visit www.legalaid.nsw.gov.au

LawAccess NSW

A free telephone service that provides legal help.

Call 1300 888 529 or visit www.lawaccess.nsw.gov.au

Community Legal Centres

Call LawAccess NSW for your nearest centre on 1300 888 529 or visit www.nswclc.org.au

Child Support Agency

Tel: 131 272

Centrelink

Tel: 136 150 from 8.00 am to 8.00 pm, Mon – Fri
133 677 Relay (deaf and hearing impaired)

Family Assistance Office

Tel: 136 150

Family Relationship Advice Line

Tel: 1800 050 321

Financial Counsellors' Association Credit and Debit Hotline

Tel: 1800 808 488

NSW Domestic Violence Line

Tel: 1800 656 463

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