



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

Date: Tuesday August 25, 2020

Under both the *Family Law Act 1975* (Cth) and the *Child Support Assessment Act 1989* (Cth), parents of a child have a legal obligation to provide financial support for that child until the child turns 18 years of age. Where the parents have separated, [one party may consider payment for child support to the other party](#). In this article, we will look at the differences between binding agreements and limited agreements.

Why enter into a Child Support Agreement?

Parents may wish to enter into a private contract for child support to provide greater flexibility for the amount of child support payable. A child support agreement can also provide certainty in respect to the financial support they will receive for their child or children.

A child support agreement can include one or all of the following:

Periodic payments of child support (weekly payments);

Non-periodic payments (i.e. school fees, extra-curricular activities or health insurance);

Lump sum payments; and/or

A modification of the child support formula.

Types of Child Support Agreements?

There are two types of private contracts the *Child Support Assessment Act* 1989 (Cth) (**CSA Act**) permits.

The CSA Act enables parties to enter into a private contract that deals with their arrangements for child support. However, there are strict requirements under the CSA Act that a private contract must comply with for the child support agreement to have effect.

The CSA Act permits:

Limited Child Support Agreements; and

Binding Child Support Agreements.

Limited Child Support Agreements

A Limited Child Support Agreement allows parents some flexibility to determine their child support arrangements.

Importantly, there **must** be a [current assessment in place from the Child Support Agency](#) (**CS Agency**) prior to making a Limited Child Support Agreement.

The CS Agency is an independent agency established under the CSA Act, to administer and oversee assessments of child support.

A parent can apply for a child support assessment for a child if they are not living with the other parent of the child. An assessment for child support can be made regardless of the amount of care provided for a child. If an application for an assessment is made, both parents will be assessed by the CS Agency.

The amount of child support provided for under a Limited Child Support Agreement must be equal to, or more than, the child support assessment.

A Limited Child Support Agreement does not require parties to receive legal advice prior to making the Agreement.

A Limited Child Support Agreement must also:

be in writing;

signed by both parties; and

meet the conditions set out in Sections 80E of the CSA Act.

Once signed, a Limited Child Support Agreement cannot be varied. If parties to a Limited Child Support Agreement wish to end or vary their agreement, they must terminate the existing agreement and replace it with a new agreement. However, after 3 years, a Limited Child Support Agreement can be terminated by either party without notice to the other party.

A Limited Child Support Agreement must be accepted by the Registrar of the CS Agency prior to it coming into effect.

Binding Child Support Agreements

Similar to a Limited Child Support Agreement, a Binding Child Support Agreement:

- must be in writing;

- must be signed by both parties;

- must meet the conditions set out in Sections 80E of the CSA Act; and

- cannot be varied. If parties to a Binding Child Support Agreement wish to end the Agreement, they must terminate the existing agreement and enter into a new Binding Child Support Agreement.

However, there are some significant differences between a Limited Child Support Agreement and a Binding Child Support Agreement.

Unlike a Limited Child Support Agreement, there is no time restriction (unlike the 3-year period for a Limited Child Support Agreement). So, a party to a Binding Child Support Agreement cannot end the agreement without notice to the other party.

A Binding Child Support Agreement requires:

- both parties to receive independent legal advice prior to making the agreement; and

- each party's solicitors must sign a certificate that is annexed to the agreement stating that they provided their client with advice as to the effect of the agreement on their rights and the advantages and disadvantages of making the agreement at the time the advice was given.

There is no requirement for there to be an assessment from the CS Agency when making a Binding Child Support Agreement.

Which Child Support Agreement is for me?

There are advantages and disadvantages to both Binding and Limited Child Support Agreements.

Advantages of a limited child support agreement

A Limited Child Support Agreement provides parties with greater flexibility, with either party permitted to end the agreement after a period of 3 years, without notice to the other party.

A Limited Child Support Agreement can be a more cost-effective option, as parties are not required to obtain legal advice prior to making the agreement.

Advantages of a binding child support agreement

There are more formal requirements for a Binding Child Support Agreement. Both parties are required to obtain legal advice prior to making the agreement, and certificates confirming the legal advice has been provided must be included in the Agreement.

However, despite the greater formalities of a Binding Child Support Agreement, these agreements provide greater certainty to parties, as the agreement remains in force (subject to it meeting the requirements of the CSA Act) until the child or children turn 18 years of age.

A Binding Child Support Agreement also provides greater flexibility to parties, as there is no requirement for the amount of child support agreed upon to be linked to any assessment of child support.

Get help from a family lawyer

The team at Meillon & Bright Legal can assist you in determining whether a Binding or a Limited Child Support Agreement is suitable for your circumstances.

Meillon & Bright is experienced in negotiating [financial arrangements for children and formalising financial agreements for child support](#).

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.