

How is child support determined in Australia?

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In 1989, the Australia Government set up a system for assessment for child support. The *Child Support (Assessment) Act 1989* (Cth) is the legislative framework for the child support system. In most cases, the amount of child support is now an administrative formula, rather than a judicial determination. In this article, we will look at who is entitled to child support payments, how they are determined and calculated, options if your payments are not being made and how to apply for changes to your assessment.

The changes to the child support system also meant the payment of child support is now enforced by the government, rather than the receiving parent. The Child Support Agency is responsible for the collection and distribution of child support.

Am I entitled to child support?

If you have a child under the age of 18 years and are separated from your spouse, you can apply to the Child Support Agency for a child support assessment if you are a 'legal parent'.

The Child Support Agency considers you a 'legal parent' if at least one of the following applies:

- You were married to the other parent when the child was born;
- You're named on the child's birth certificate as a parent;
- You're named in adoption papers as a parent;
- You're male and lived with the mother any time between 20 to 44weeks before the child's birth;

A clear statement from a relevant court identifies you as the child's parent;

You're a parent under the*Family Law Act 1975*- this covers artificial conception and surrogacy;

There is a statutory declaration made by you stating you're the child's parent;

There is a statutory declaration made by the other parent stating you are named on the child's birth certificate;

There is a statutory declaration made by a non-parent carer stating one or both parents are named on the child's birth certificate.

Legal guardians (or non-parent carers) can also apply to the Child Support Agency for an assessment to receive child support from one or both parents.

Non-parent carers can apply for child support if **all** of the following criteria are satisfied:

They care for a child for at least 128 nights are year;

They aren't the partner of either of the child's parents; and

They don't have joint care with either of the child's parents.

How is child support determined?

The Department of Human Services calculates child support entitlements using quite a complex formula.

In simple terms, child support is calculated according to income and percentage of care. However, in the case of non-parent carers, their income is not considered.

In a nutshell, your child support liability if you are the payer, or entitlement if you are the recipient, is determined by your adjusted taxable income and how much time you spend with your child (or children).

A parent who provides primary care of the child or more than primary care does not have to pay child support.

The following factors are also considered in the child support formula:

Parents with other dependent children (i.e. who are not subject of the relevant child support assessment).

Parents with two or more child support assessments.

If you receive child support and you are not a parent (for example, a legal guardian that is not a biological parent, such as a grandparent or foster carer).

The age of the child. The formula is designed to reflect the different costs associated with children of different ages. The cost of raising a child will vary depending on their age.

For a guide as to your child support entitlements, you can visit the Department of Human Services child support online estimator.

What if I am not receiving the child support I am assessed to receive?

The government has significant powers that make it easier to collect child support payments from a liable parent. For example, the government can garnish a liable parent's wage or collect their income tax refund (if they were to receive one).

These powers are broad.

Can I apply to change my child support assessment?

Parents can apply to the Child Support Agency to have their assessment changed. This is known as a child support departure application.

There are 10 grounds of departure:

The costs of raising the child are significantly affected by the high costs of spending time or communicating with the child. For example, where a child lives a significant distance (interstate or overseas, for example) from a parent and travel expenses (such as airline tickets) are incurred.

The costs of raising the child are significantly affected because of their special needs.

The costs of raising the child are significantly affected because the child is being cared for, educated or trained in the way both parents intended. This can be where a child attends private school.

The child support assessment is unfair because of the child's income, earning capacity, property or financial resources. For example, where a child is undertaking a paid apprenticeship or is employed. This ground is more relevant for children over the age of 16 years and begins self-supporting themselves before they attain the age of 18 years.

The child support assessment is unfair because you've paid or transferred money, goods or property to your child, the receiving parent or a third party, for the child's benefit.

The costs of raising the child are significantly affected by the parent or non-parent carer's child care costs, and the child is under 12 years of age.

Your necessary expenses significantly reduce your capacity to support the child. For example, where a parent has high medical costs or debts incurred during the marriage that they must maintain.

The child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents. This ground is relevant where you or the other parent's financial resources, income and property aren't being reflected in the assessment or a parent's earning capacity is greater than what's reflected in the assessment. This may be the case if a parent receives income from a business or distributions from a trust or works overseas. This may also be relevant where a parent is "asset rich" but "income poor", given the child support formula only relies on adjusted taxable income.

Your capacity to support the child is significantly reduced because of:

your duty to maintain another person or child;

the special needs of that person or child; or

the costs of spending time with or communicating with that person or child.

Your responsibility to support a resident child significantly reduces your capacity to support another child.

To be successful in seeking a child support departure, you much show:

firstly, that there is a ground for departure; and

secondly, that it is just and equitable and otherwise proper that there be a departure from the ordinary assessment.

Other options for child support

Having child support managed through the Child Support Agency is not the only option.

Parents may reach a private arrangement and manage this themselves or enter into either a Limited Child Support Agreement or a Binding Child Support Agreement. More information about the different types of Child Support Agreements in our article “The difference between a Binding Child Support Agreement and a Limited Child Support Agreement”.

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.