

# Family Law Alert

April 2008

## *Changes to the Child Support Scheme*

**From 1 July 2008 all parents who pay or receive child support will be affected.**

The principle object behind child support is to ensure that children receive a proper level of financial support from their parents and the most significant overhauls to Child Support Scheme since its inception in 1989 are to commence on 1 July 2008. All parents who pay or receive child support will be affected, even if you have worked out your own private payment arrangements.

### **The Changes**

The changes to child support are based on the recognition that child support should be based on an "income sharing" approach by both parents. This means the income of the payer and the payee are combined and using a prescribed formula for the cost of raising a child that cost is shared proportionally between the two parents having regard to their respective incomes. The new Child Support Scheme will aim to better balance the interests of both parents and be more focused on the needs and costs of children. Both parents will effectively share the costs and responsibilities of their children.

Rather than there being little regard to the actual costs of bringing up a child with the same percentage applying to whether a child is 1 week old or 17 years old, an attempt has now been made to differentiate child support depending on the child's age and both parents' income.

Previously children from a second relationship were treated differently from children to a prior relationship. Now there is a view that all children will be treated equally regardless of which relationship they live in.

The new scheme will also deal with the new family law philosophy of shared care. It recognizes that there have been significant issues between parties over when fathers spend time with their child which is in effect a child support argument. Child Support payments will now reflect each parent's level of care and how much it costs to care for a child.

It should also be noted that there is now provision for the reduction in child support when there is day time contact but not overnight contact. This means that if children are young and are not having overnight contact but there is contact during the day the child's expenses may nevertheless be covered in part. As a result parents with regular, or shared care of a child, will be acknowledged as directly meeting some of the costs of the child through care.

Parents who have a minimum child support assessment and pay child support to more than one family will pay a minimum amount for each family.

There will be better options for parents who make private arrangements between themselves for ongoing child support or lump sum payments.

Family Tax Benefits will also be affected and will be shared between the two households and will be reflective of the obligations pertaining to child support. From 1 July 2008 once you are receiving child support your family tax benefit will be calculated according to how much child support you receive.

## The Current Formula

The current formula to determine what a parent is required to pay by way of child support uses fixed percentages of income to work out child support assessments. Unlike the new formula it doesn't take into account the different costs of raising children of different ages, or care arrangements for paying parents with the care of the children two to three nights per fortnight or the effect of the paying parents' income tax.

The current formula takes the income of the payer, deducts an amount roughly equivalent to a single person's pension, and shares the balance with the children in accordance with fixed percentages as follows:

- One child – 18%
- Two children – 27%
- Three children – 32%
- Four Children – 34%
- Five or more children 36%

The level of care a parent has of their children also affects the amount of child support payable and the current formula assumes a fixed proportion of care of the child depending on the number of nights a child spends with a parent.

## The New Formula

The Child Support Agency (CSA) will use a new formula to calculate a parent's contribution to the support of their children. Of course, every parent's situation is different so the formula is adaptable with variations to take this into account.

The key components of the new formula are:

- The costs of raising children will now form the basis of the formula;
- Both parents income will be taken into account and considered equally;
- The same self support amount will be deducted from each parents income before the child support amount is calculated;
- Contributions by parents who have shared care of their children will be better acknowledged and child support payments will reflect each parents level of care;
- Children from first and subsequent relationships will now be treated in a similar way.

## Private Arrangements

Parents who make private arrangements between themselves for regular child support, or lump sum payments will have better protection and greater flexibility.

Under the current scheme once the Child Support Agency accepts a written agreement between parents of a child for the payment of a particular amount of child support there is no requirement to update the agreement amount to account for a change in circumstances. If circumstances were to change the result could be that the agreed amount could be less than would be payable if the agreement was not in place.

Under the new scheme, parents who want to make agreements will be better protected and it will be easier to make shorter term agreements. Parents who agree to receive less child support than they would under the formula will be able to do so provided they receive independent legal advice. Parents will also be able to end agreements if their circumstances change in ways that are not covered by the Agreement.

There will be two types of agreements that parents can enter, a Binding Child Support Agreement or a Limited Child Support Agreement.

A Binding Child Support Agreement will require the parties to receive independent legal advice as to the effect, advantages and disadvantages of the Agreement. There will need to be a certificate attached to the Agreement from each party's lawyer and Binding Agreements will only be terminated by either a further written agreement or by an order of the Court.

A Limited Child Support Agreement will not require independent legal advice and can be terminated after three years by either a new agreement or when written notice is provided by the parent who wishes to end the Agreement. There must be a formula assessment already in place and the amounts payable under the agreement must be equal to or greater than the formula assessment. Limited agreements can also be included in a parenting plan under the *Family Law Act 1975*.

Parents will also have the flexibility of being able to make lump sum agreements which may have an effect when negotiating a property settlement between the parties. Parents can also make direct payments often referred to as non-agency payments.

Binding Agreements can also include lump sum payments to be credited as child support payments so long as the lump sum is equal to or greater than the annual child support rate under the formula.

### **Other Changes**

Other changes to the Child Support Scheme see more types of income included in the calculation of child support such as foreign income, fringe benefits and additional tax-free pensions and benefits.

In special circumstances parents will be at liberty to apply for a change in their assessments to allow for stepchildren they care for in their new relationship and parents who decide to reconcile will also receive assistance in relation to child support issues.

Also there will be provisions that allow parents to request that additional income earned after separation be excluded from their child support assessment calculations for a period of up to three years after separation to allow the parent to re-establish themselves.

### **Conclusion**

In summary the changes to the Child Support Scheme are significant and from 1 July 2008 the new Child Support Scheme will be aiming to balance the interests of both parents and be more focused on the needs and costs of raising children. It is hoped this will reduce the conflict between parents of children following separation, encourage the family law philosophy of share parental responsibility and ensure children are financially supported by both their parents.

If you wish to discuss the child support scheme or require further information please do not hesitate to call us on (07) 3223 6424.

(Sources: The Child Support Scheme Guide, Australia Master Family Law Guide, Reforms to the Child Support Scheme)