



MAINTENANCE AND CHILD SUPPORT

What is Child Support?

It is money payable by a parent ordinarily to the other parent to financially support a child. It applies to children where one of the party's children was born on or after 1st October 1989 or where the parties separated on or after that date.

What is Child Maintenance?

It is payable by a person ordered by a Court to financially maintain a child, usually from one parent to the other. The child is one who is not covered by child support. It can extend to meeting the mother's costs of pregnancy and giving birth.

The person paying can be a step-parent and the "child" could be over 18 and still studying or have a serious health problem.

What is the Child Support Agency?

The agency is a Commonwealth Government agency. It was established to ensure that payers of child maintenance, spousal maintenance or child support paid their monies on time and the full amount and thereby reduced Centrelink spending.

The agency first started in 1988. The agency's website is www.csa.gov.au

How does the Child Support Agency enforce payment?

The agency only enforces payments if it involves periodic payment of child support or maintenance or spousal maintenance and the liability is registered with the agency. This occurs by registering the court order, issuing a child support assessment, or by approving a child support agreement.

If the payment is non-periodic either in kind or lump sum, if it is not registered or if there are sufficient domestic violence concerns for the safety of the payee, the agency may not enforce.

Enforcement is usually in the same manner as PAYE tax but it can involve penalties on arrears, seizure of debts owing to the payer (such as monies held in a bank account or tax refund) or court enforcement remedies.

Can child support or maintenance be varied?

Yes. Child support can be varied in a number of ways such as:-

- The payer estimating that his or her income for the financial year will be less than 85% of the assessed income (this needs to be accurate - penalties may apply if mis-stated);
- The parties entering into a child support agreement;
- The parties agreeing to credit child support paid in kind against child support assessed to be paid;
- Where there are generous or flexible arrangements for the overnight care of the children
- When either the Agency or the Family Court/Magistrates Court reviews child support payable and varies it.

The latter may occur in conjunction with other proceedings before the Court.



Child maintenance

Can be varied by:-

- (a) Agreement - variation of a child maintenance agreement or
- (b) Court order (and this may be by agreement).

Common pitfalls with child support agreements

1. They will only be enforced by the agency if they are registered with the agency in writing, signed by the parties and approved by the agency (if necessary by Centrelink).
2. If they provide that less than 90% of the assessable amount is payable to the payee, the agreement may not be approved (if one party is receiving Centrelink benefits).
3. If they provide for a lump sum or in kind payment there can be additional problems including:-
 - (a) Lump sum or in kind payment is not enforced by the agency;
 - (b) If the provision is for a substantial amount, failing to credit against child support liability in a particular year could mean that the payer pays twice i.e. in accordance with the agreement and in addition, periodic child support;
 - (c) If there is a failure to abide by the 25% rule (i.e. child support payable by lump sum or in kind is not to exceed 25% of the child support payable each year if the payee at any time is receiving Centrelink benefits) - might mean that the payer pays twice.

For example, if the payer in accordance with the agreement gives a lump sum of \$8,000.00 for child support in year 1, and in year 1 the amount assessed payable by child support otherwise is \$10,000.00, the amount payable by the payer is:

| | |
|---|-----------------|
| Lump sum payment | \$8,000 |
| Amount assessed to be paid | <u>\$10,000</u> |
| | \$18,000 |
| Less 25% credit of the amount assessed (i.e. 25% of \$10,000.00) | <u>\$2,500</u> |
| <hr/> | |
| Total payable | \$15,500 |

In this example the payer has overpaid by \$5,500.00 as compared with what he or she might have been assessed to pay.





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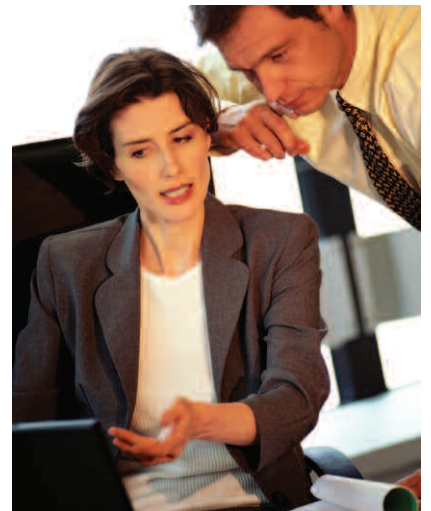
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We have offices at Upper Mt Gravatt, Stafford and Kawana.

We pride ourselves in being the market leaders in state-of-the-art technology combined with old-fashioned client service.

***The solicitors in our family law section are
Warren Tegg, Kate Murphy and Joanne Bennett***



Warren Tegg

Warren was admitted to practice as a Solicitor of the Supreme Court of Queensland and the High Court of Australia in 1979. He ran his own legal practice specialising in Family Law and Business Advice from 1980 until 2001 before merging with Bennett Carroll. Warren has been helping people with their Family Law problems since the inception of the Family Law Act in 1976.

Warren is Department Head with the Family Law division of Bennett Carroll. He brings to the department a wealth of experience that includes some five years running his own call centre for people with Family Law problems, as well as acting as a sessional mediator with Relationships Australia Queensland from 1989 to 1994. He is also the General Manager of the Master Guidance Company, which is a counselling service owned by Bennett Carroll.

Warren has served on a number of Queensland Law Society committees during his career and is currently a member the Small Practice Management division where he has been called upon to speak at State conferences on legal practice.



Kate Murphy

Originally from Northern NSW, Kate studied at Queensland University of Technology graduating in 2005 with a Bachelor of Laws and a Bachelor of Business. She has a strong interest in Family Law, which extends to international law relating to marriage and children.

Kate was admitted to the Supreme Court of Queensland in 2006 and the High Court of Australia in 2007. Kate has over 4 years extensive experience in Family Law, as well as engaging in Criminal and Commercial Law. Kate has also had the benefit of being trained with Pauline Tesler, with a strong focus on negotiation.

Kate is a member of the Queensland young lawyers association.

Joanne Bennett

Joanne graduated from Deakin University before completing her Professional Legal Training at Bond University in 2003 and was admitted in December that year.

Joanne is an experienced family lawyer and can offer professional assistance and guidance in all types of family law matters including those involving children and financial issues, de facto relationships, pre-nuptials and parental orders.

Joanne also has extensive Commercial Law experience in vital areas such as property, company structures, franchise agreements, joint venture agreements and leases.

Family law is a very complex and emotional area of law; it will involve your whole family. This is why when things go wrong, you need an experienced team of friendly lawyers who are compassionate professionals with real life experience who understand your problems.



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