Binding Child Support Agreements: What You Need to Know

When parents separate, child support can often be a source of uncertainty or disagreement.

While child support can be determined through an administrative assessment by Services Australia, parents may instead choose to reach their own agreement about how their children will be financially supported.

A Binding Child Support Agreement can provide parents with specific certainty about child support arrangements on an ongoing basis. However, because these agreements are legally binding, there are strict requirements to be satisfied before an agreement is considered valid and enforceable.

What is a Binding Child Support Agreement?

A Binding Child Support Agreement (“BCSA”) is a formal written agreement between separated parents that sets out the child support that will be provided for a child.

It is a way parents can move away from administrative assessment provided by Services Australia. Parents can agree to an amount that is the same, higher or lower than the assessed amount.

A BCSA can also address different forms of child support including periodic payments, non-periodic payments, lump sum payments or non-cash payments, depending on the terms of the agreement.

What are the requirements?

There are strict formal requirements for a Binding Child Support Agreement to be considered valid including:

The agreement must:

- Be in writing;
- Be signed by the parties;
- Contain the required statements confirming each party has received independent legal advice; and
- Have a certificate from the legal practitioner who has provided that advice attached to the agreement.

Each party to a BCSA must obtain independent legal advice before signing as provided in Section 80C of the *Child Support (Assessment) Act (1989)* and requires the legal practitioner to advise as to;

- The effect of the agreement on the rights of that party; and
- The advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement.

Why enter into a BCSA?

There can be significant advantages to entering into a BCSA including:

- **Flexibility**

Parents can negotiate terms that suit your unique financial and personal circumstances.

- **Customisation**

BCSAs allow parents to agree on a higher or lower amount than the standard assessment formula, reflecting the actual needs of the child and the parent's financial capabilities. Parents can take into account expenses such as school fees, extra-curricular activities. Medical expenses and possible changes to their respective incomes.

- **Certainty**

Once signed in accordance with the legal requirements, a BCSA is legally enforceable and provides parents with stability. The paying parent then is aware of their ongoing financial obligations and entitlements and can allow both parents to offer stability and security for the children's ongoing care.

- **Enhanced enforceability**

Once registered with Services Australia, BCSAs can be enforced through the child support collection system or through the Federal Circuit and Family Court of Australia if necessary.

What happens if circumstances change?

One of the most important things to consider before entering to a BCSA is that as it is a legally enforceable agreement, it is not a flexible agreement that can be changed whenever circumstances change.

Under the *Child Support Assessment Act 1989 (Cth)* a BCSA agreement cannot be varied. Instead, the BCSA needs to be terminated and replaced with a new BCSA if parents agree to change the terms.

This is an important distinction from an administrate assessment and a limited child support agreement and this should be very carefully considered when negotiating the terms of an agreement.

The BCSA needs to consider the possibility of changes to income or care arrangements that may occur before the children turns 18 years of age.

Can a BCSA be terminated?

A BCSA can only be terminated in limited circumstances including the following:

- The parties entering into a new BCSA which terminates the existing agreement;
- The parties entering into a compliant written termination agreement; or
- A court setting aside the agreement.

If the parties cannot agree to terminate the BCSA, an application to the Court may be necessary.

This highlights the need to obtain independent legal advice from a specialist family lawyer as a BCSA is not a document that can be easily changed.

Creating a BCSA that protects you and your interests and your children's needs requires careful consideration by a specialist family lawyer who can provide expert guidance if this option is suitable to you and your circumstances.

We offer a 90-minute initial meeting to develop a "Family Road Map" tailored to your personal situation.

All your concerns will be addressed in this appointment, and your lawyer will explain the process and outline a plan for next steps. All of a set fee.

For more information or to book your 90 minute “Family Road Map” appointment, please call 8238 6666 or make an appointment using our **Contact Form**