A child support agreement is a contract between parents, or between parent(s) and a non-parent carer. It essentially allows parents to make their own private arrangements to provide a proper level of financial support for their children whom are yet to reach 18 years of age or complete their secondary education, whichever event occurs later.

There are two types of agreements:
- Limited Child Support Agreements; and
- Binding Child Support Agreements.

There are a number of significant differences between the two.

The key features of a Limited Child Support Agreement are as follows:

1. The agreement can be made without obtaining legal advice.
2. It must be in writing and signed by both parents.
3. There must be a child support assessment already in place.
4. The annual rate of child support payable must be equal to or more than the annual rate of the child support assessment.
5. The terms do not take effect unless and until it is registered by the Registrar of the Child Support Agency ("CSA").
6. The CSA will make a notional assessment of how much child support would be payable without having regard to the terms of the agreement. As detailed hereunder, there are consequences, if the notional assessment changes by more than 15%.
7. It has a statutory sunset clause of three years, after which time either party to the agreement can unilaterally terminate the agreement.
8. The agreement cannot be varied, but it can be terminated in the following manner: (a) Replacing it with a new child support agreement – either limited or binding.
(b) An agreement in writing between the parties stating that the agreement is terminated.
(c) A court order setting aside the agreement.
(d) Either party can request a new notional assessment of child support. If the notional assessment changes by more than 15%, then the party has 60 days to give notice terminating the Agreement. In other words, if the amount of child support payable under the new notional assessment varies by more than 15% from the previous notional figure in circumstances not contemplated by the Agreement, then either party has the option of terminating the Agreement.

The variables that may affect the notional assessment include:
(i) A change to either party’s taxable income;
(ii) A change to the care arrangements for the children; and
(iii) The children’s ages.

9. Once the agreement terminates and is not replaced with a new agreement, then the liable parent’s child support obligations will be as assessed by the CSA.

By comparison, the key features of a Binding Child Support Agreement are as follows:

1. Each party to the agreement must have received legal advice.

2. It must be in writing and signed by both parents.

3. The amount agreed upon by the parents may be more or less the amount the payer would be assessed as paying under a notional assessment issued by the CSA.

4. The parties are able to make provision for lump sum crediting. In other words, the parties may agree for a lump sum amount to be paid on account of child support in lieu of a weekly periodic amount.

5. Both parties have an obligation to disclose their financial circumstances before entering into the agreement. Failure to provide such disclosure may result in, at a later time, the other party being able to successfully set aside the agreement.

6. Certain requirements must be met for it to be binding.

The agreement must contain a certificate under Section 80C of the Child Support (Assessment) Act 1989 completed and signed by each parent’s legal practitioner.

The section requires that a binding child support agreement contain a statement to the effect that the party to whom the statement relates has been provided with independent legal advice from a legal practitioner as to the following matters:

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

The parties to the agreement are accordingly required to sign a certificate attached to the
agreement certifying that they have received the required advice.

7. Once in place, the terms of the agreement can only be set-aside by a termination agreement (whereby legal advice must first be obtained by both parties), a new binding child support agreement or by obtaining an order of the court.

8. The circumstances in which a court may set aside a binding child support agreement include fraud, non-disclosure and conduct by one party to the other which would make it unjust not to set it aside, such as undue influence, duress or unconscionable conduct.

There are of course both advantages and disadvantages of entering into a Limited Child Support Agreement and a Binding Child Support Agreement depending on the parties’ own set of circumstances and what they are hoping to achieve by entering into one.

It is therefore recommended that each party first obtain legal advice to ensure that they properly understand - the differences between a Limited Child Support Agreement and a Binding Child Support Agreement, the terms of a proposed agreement and how it will ultimately affect them.

Our team of experienced Family Lawyers in Brisbane are available to help you with any children dispute matters including Child Support Agreements, Shared Parenting and Parenting Plans.