

# Applying to court for a stay order



CHILD SUPPORT FACTSHEET 4

If Services Australia: Child Support ('Child Support') is collecting child support from you, you can apply for a stay order to suspend or reduce child support while Child Support, the Administrative Appeals Tribunal (AAT) or the court makes a decision in relation to your child support case. The Child Support Service of Legal Aid NSW can give you advice about this. This factsheet explains the steps you can take. If you are unsure about any of these steps, please contact us to make an appointment.

## Do I need a stay order?

You can only apply for a stay order in a child support matter if you have:

- made an application to Child Support for the assessment to be changed in special circumstances or
- made an application to the AAT about your child support case or
- lodged an objection to a Child Support decision or
- other child support proceedings before the court.

You may not need a stay order if you have made an application to a court for a paternity declaration because you think you are not the father of a child. In that case you should send Child Support a copy of your court application.

Child Support may continue to collect money from you, but they must stop paying the money to the mother until the paternity proceedings have been finalised. Child Support will hold any money collected from you in trust for this period.

## How do I apply to court?

### Step 1: Get the court forms

Child support matters are generally started in the [Federal Circuit and Family Court of Australia \(FCFCOA\)](#) although some matters may be dealt with in the Local Court. These instructions will help you to file your application in the FCFCOA.

You will need to prepare the following documents:

- An **Initiating Application**.
- An **affidavit** in support of your application.
- A completed **financial statement**.

You can download these forms from [www.fcfcga.gov.au](http://www.fcfcga.gov.au) or you can call the court on **1300 352 000** and they will post the forms to you.

## Step 2: Prepare your court application

In the **Initiating Application** you should ask the court to make the specific order you are seeking. For example:

That pursuant to section 111C of the Child Support (Registration and Collection) Act 1988, the collection of child support is stayed pending the Child Support Registrar's decision on the applicant's application for a change to the child support assessment.

An **affidavit** is a written statement setting out the evidence to support your application in your own words. You should explain why you are applying to court for a stay order and attach relevant documents from Child Support – for example, a copy of the current child support assessment, a letter from Child Support confirming you have applied to change your assessment or a copy of the Child Support decision to which you have lodged an objection.

The **financial statement** is a detailed form that asks about your income, expenses, property and financial resources.

Your affidavit and the completed financial statement must both be witnessed by a lawyer or Justice of the Peace. They will ask you to swear or affirm that the information in each document is true before you sign them.

For more information about preparing an affidavit and a financial statement, visit the court website [www.fcftoa.gov.au](http://www.fcftoa.gov.au).

## Step 3: Filing your documents at court

After you have prepared your court documents, you must send them to the court registry for filing. You are not required to pay a filing fee for child support matters. As at January 2022, these applications cannot be e-filed on the Commonwealth Courts Portal, so you should email them to the court registry. Check the court website [www.fcftoa.gov.au/court-locations](http://www.fcftoa.gov.au/court-locations) or call the court on **1300 352 000** to find the registry closest to you and the email address for filing applications that cannot be e-filed.

The court registry will file your application and send you an email telling you the file number, and the date and time that your matter is listed before the court. You will need to register to use the Commonwealth Courts Portal ([www.comcourts.gov.au](http://www.comcourts.gov.au)) to download sealed (stamped) copies of your documents for service on the other party and Child Support.

## Step 4: Service of documents

You must arrange to serve a sealed copy of the documents on the other party in your child support case. You cannot do this yourself. You may choose to use a commercial process server to serve the court documents. The person who serves the documents must complete an Affidavit of Service. More information about service is available on the court website at [www.fcftoa.gov.au/hdi/serve-fl-documents](http://www.fcftoa.gov.au/hdi/serve-fl-documents).

You can serve a copy of the documents on Child Support by mailing them to GPO Box 9815, Melbourne VIC 3001. You should include a covering letter asking Child Support to provide an acknowledgement of service for you to show the court.

## Step 5: What happens on the first court date?

You must attend court on the first court date. If you do not attend your application may be dismissed. You should take all your paperwork with you to court, including your proof that the other party has been served. If the court has advised you that you have a telephone or audio-visual hearing, make sure that you have copies of the document with you when you call or join the conference.

If the other party has not had much time between receiving the documents and the court date he or she may ask for an adjournment. It may be possible for you and the other party to reach an agreement about the making of a stay order. If this is the case, that agreement can be made into consent orders by the court. If you and the other party cannot reach an agreement the court will fix a time for hearing. This may be on the same day or another date. If the other party does not attend court and you have proof that he or she was served with your application the court may deal with the matter in his or her absence.

If the court grants the stay order, you should advise Child Support immediately. You should obtain a sealed copy of the orders from the Commonwealth Courts Portal and forward it to Child Support.

It is very important to remember that a stay order is temporary while a decision is made on your application, objection or appeal. If your other application is not wholly successful, you will still be required to pay the child support that you did not pay for the period of the stay order.

## Can I get legal aid?

In limited circumstances you may be able to get a grant of legal aid to apply for a stay order. You will need to complete a legal aid application form and provide us with proof of your income and assets. If you are eligible then Legal Aid NSW will make the application to court on your behalf. Contact LawAccess NSW on **1300 888 529** for more information.

## For more information and help

### Legal Aid NSW Child Support Service

**02 9633 9916** (Sydney and metropolitan areas) **1800 451 784** (outside Sydney).  
Free, independent, confidential advice about child support issues.

### LawAccess NSW

**1300 888 529** Legal assistance and referrals over the phone including assistance with applying for legal aid.

### Domestic Violence Unit

**1800 979 529** A dedicated statewide service of Legal Aid NSW bringing together specialist domestic violence lawyers, social workers and financial counsellors.

#### **Child Support Service, Legal Aid NSW**

Level 4, 128 Marsden Street,  
Parramatta NSW 2150

PO Box 165, Parramatta NSW 2124

Ph: **(02) 9633 9916** (Sydney and metropolitan areas) or

Toll free **1800 451 784** (outside Sydney)

Fax: (02) 9219 5559

Email: [admin.css@legalaid.nsw.gov.au](mailto:admin.css@legalaid.nsw.gov.au)

There are five factsheets in this series:

- **Child Support Factsheet 1:**  
Taking action to get child support
- **Child Support Factsheet 2:**  
Taking action to dispute paternity
- **Child Support Factsheet 3:**  
Applying to court for a change of assessment
- **Child Support Factsheet 4:**  
Applying to court for a stay order
- **Child Support Factsheet 5:**  
Going to the Administrative Appeals Tribunal

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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For more information about Legal Aid NSW services:



#### **Do you need help to contact us?**

If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.



#### **Do you find it hard to hear or speak?**

If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit:

[www.relayservice.gov.au](http://www.relayservice.gov.au)