

Taking action to get child support



CHILD SUPPORT FACTSHEET 1

This factsheet is for mothers who need proof of parentage for an assessment of child support payable by the biological father of their child.

The Child Support Service at Legal Aid NSW can give you advice about getting proof of parentage for a child support application. This factsheet explains the steps you can take. If you are unsure about any of these steps, please call us to make an appointment on **(02) 9633 9916** (Sydney and metropolitan areas) or **1800 451 784**.

Your Family Tax Benefit can be reduced unless you take reasonable action to get child support from the father of your child.

Step 1: Apply to Services Australia: Child Support

Lodge an application for a child support assessment with Services Australia: Child Support ("Child Support"). You can do this online at: <https://childsupportapplication.humanservices.gov.au/> or by telephoning Child Support on **131 272**.

Child Support will ask you for proof that the person you named in your application is the father of your child. Child Support is only allowed to accept the following types of proof of parentage:

- if the person is named as a parent on the child's birth certificate
- if the person has sworn a statutory declaration that he or she is a parent
- if you and the person were married when the child was born
- if you were living with the person when the child was conceived
- if the person has legally adopted the child or
- if a court has made an order that the person is a parent.

NOTE: Child Support cannot accept the results of a DNA test as proof of parentage.

Step 2: Child Support may refuse your application

If you do not have acceptable proof that the person is the father of your child, Child Support will tell you they are refusing your application and send you a letter. As soon as Child Support tell you they are going to refuse your application, you should contact us for an appointment. You must apply to court within 56 days of when you get Child Support's refusal letter.

Step 3: Get legal advice

Contact us to make an appointment to speak to one of our lawyers. When you book your appointment, we will ask you to send the following documents to our office:

- the letter from Child Support refusing your application and
- a copy of your child's birth certificate if you have one.

You can send a picture or screenshot of those document to us by email.

Our lawyer will telephone you at your appointment time. You can ask the lawyer any questions that you have about your case. They will tell you if you are likely to be eligible for a grant of legal aid for us to make an application to court on your behalf.

Eligibility for legal aid

If you are eligible for a grant of legal aid

You will need to complete a legal aid application form and provide us with proof of your income and assets. If you are eligible for legal aid we may then make an application to the court on your behalf. Your legal aid lawyer will tell you more about this process. An application to court will often involve DNA parentage testing. Once a court has made orders about the parentage of your child, you can register those orders with Child Support and they will then issue a child support assessment.

If you are not eligible for a grant of aid

You may choose to use a private lawyer or you can make an application to court yourself. In either case you should file your application as soon as possible after you receive the refusal letter from Child Support because there is a time limit. You must apply to court within 56 days of when you get the letter.

Applying to court for a child support parentage declaration

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 and
- an **affidavit** in support of your application.

You can download these forms from 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 following final order:

A declaration pursuant to section 106A of the Child Support (Assessment) Act 1989, that [NAME OF THE FATHER] should be assessed in relation to the costs of the child [NAME OF YOUR CHILD AND DATE OF BIRTH], because the [NAME OF THE FATHER] is a parent of [NAME OF YOUR CHILD].

If your application is filed more than 56 days after the date you received Child Support's refusal letter, you must also seek an order for an extension of time. In that case the order you should seek is as follows:

That pursuant to Regulation 15.06 of the Federal Circuit and Family Court of Australia Rules 2021 the time for filing of this application for a declaration pursuant to Section 106A of the Child Support (Assessment) Act 1989 is extended to the date this application is filed.

An **affidavit** is a written statement setting out the evidence to support your application in your own words. You should give a brief history of your relationship with the father, and details of any other relationships you had before or after your child was conceived. If your application is late and you are seeking an extension of time, you should also give reasons for the delay in your **affidavit**.

You should attach to your **affidavit**:

- a copy of your child's birth certificate if you have one and
- a copy of the letter from Child Support refusing your application for child support.

Your affidavit needs to be witnessed by a lawyer or Justice of the Peace, who will ask you to swear or affirm that the information in it is true before you sign it. For more information about preparing an **affidavit** visit the court website: 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 <https://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 to serve on the other party (your child's father) and Child Support.

Step 4: Service of documents

You must arrange to serve a sealed copy of the documents on the other party. You cannot do this yourself. You may choose to use a commercial process server to serve the court documents (for a fee). The person who serves the documents must complete an Affidavit of Service. More information about service is available on the court website at <https://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 been served but does not come to court, you may be able to ask the court to make your orders on a final basis. If the other party comes to court but tells the court that he does not believe he is the father of the child, you should seek orders from the court for DNA testing. You can ask that the other party pay the costs of the testing, or you can share the cost. If you can't agree, the court will decide.

If you are required to undergo DNA testing, you should seek an adjournment of at least two months for the testing to occur and for a report to be prepared.

Step 6: DNA testing – How does DNA testing work?

You must use one of the laboratories authorised under the Family Law Regulations to conduct DNA parentage testing. DNA testing can be costly. The laboratory will arrange for samples to be taken from the child and both parents and then prepare a report that can be used as evidence in court.

Step 7: Next court date

When the DNA testing results are available, the judicial officer will consider the report and can make appropriate final orders. When you receive the final orders from the court, you should send a copy to Child Support. Provided the court made a declaration about child support, an assessment should be made and issued to you.

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.

Law Access NSW 1300 888 529

Legal assistance and referral 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) 9689 1082

Email: 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 for a change of assessment**
- **Child Support Factsheet 4:
Applying 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