

Taking action to dispute paternity



CHILD SUPPORT FACTSHEET 2

If you are assessed to pay child support for a child, but don't think you are the father, you may be able to take legal action to resolve the issue. The Child Support Service at 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.

Why am I paying child support?

Services Australia: Child Support ('Child Support') must be satisfied that you are the father of the child before it can make a child support assessment. Child Support can only be satisfied that you are the father if at least one of the following applies:

- Your name is on the child's birth certificate
- You made a statutory declaration that you are a parent of the child
- You were married to the mother at the time the child was born
- You were living with the mother when the child was conceived
- You have adopted the child
- A court has made an order that declares or recognises you are a parent of the child

If Child Support is satisfied you are a parent of the child, it will accept an application for you to be assessed to pay child support for that child.

Can I object to Child Support's decision?

You cannot object to Child Support's decision to accept an application just because you believe are not the parent of the child. Instead, you can apply to a court for an order that you should not be assessed to pay child support because you are not a parent of the child. You can also in some cases seek a further order that the mother repay some or all of the child support that they received from you.

How do I apply to court?

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 may choose to use a private solicitor or make an application to court yourself. In either case, you should file your application as soon as possible after receiving a letter from Child Support advising you that it has accepted the child support application. The time limit is that you must apply within 56 days of when you get the letter. If it is more than 56 days since you received that letter, you must ask the court for leave to make your application.

Step 1: Get the court forms

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.fcfcoa.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 107 of the *Child Support (Assessment) Act 1989* that [YOUR NAME] should not be assessed in relation to the costs of the child [NAME OF CHILD] because [YOUR NAME] is not a parent of the child.

If you intend to ask that the mother repay to you the child support you have already paid, you may ask the court to make the following order:

- That pursuant to section 143 of the *Child Support (Assessment) Act 1989*, [NAME OF MOTHER] repay the applicant the sum of [AMOUNT TO BE REPAID] within 28 days.

If your application is filed later than the time limits that apply for filing, you should 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, Rule 3.05 of the Federal Circuit and Family Court of Australia Rules 2001 the time for filing of this application for a declaration pursuant to Section 107 of the *Child Support (Assessment) Act 1989* is extended to the date this application is filed.

You will probably also need to seek interim orders that you, the mother and the child take part in DNA parentage testing.

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 mother and explain the reasons you believe you are not the father of the child. If your application is late and you are seeking an extension of time, you should also give reasons for the delay. If you are seeking an order that the mother repay child support under section 143 you should also provide evidence to support this, including the amount of child support you have paid to date. The court must consider making this order if it makes a declaration under section 107, but has the discretion not to order repayment, or to order that only a certain amount be repaid.

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.fcfcoa.gov.au

If you are applying for an order that the mother repay child support, or for a stay order (see below) you will also need to file a completed **financial statement**.

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.fcfcoa.gov.au 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) 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 www.fcfcoa.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 to 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 you have copies of the documents with you when you call or join the conference.

On the first court date you can ask the court to determine your interim application for DNA parentage testing to take place and/or for child support payments to be stayed. The court will adjourn your matter for several months to allow the DNA testing to occur.

Step 6: 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. If the court made a declaration that you are not the father, Child Support should end the assessment and stop collecting child support from you. If the court has also made an order that the mother repay money to you, you can ask Child Support to register this order and collect the money from the mother.

Can I stop paying child support while I go through court?

You are still required to pay child support while you go through court. If you want to suspend the payments during the court proceedings you can ask the court to make a stay order. If the court grants a stay order Child Support is prevented from collecting child support from you until the matter is decided on a final basis. However, if you are then found to be the child's father, you will still have to pay all the child support that would have been payable during the stay period. (See Factsheet 4 for more information about stay orders).

Alternatively Child Support can hold any child support you pay on trust until the paternity matter is determined, so it is not paid to the mother. If you are then proved not to be the father, this money is repaid to you. You do not need a stay order for this. You just need to

forward a sealed copy of your court application to Child Support. You can ask Child Support more about this by calling 131 272.

Can I get legal aid?

You may be able to get a grant of legal aid. You will need to complete a legal aid application form and provide 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 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

There are five factsheets in this series:

- **Child Support Factsheet 1:**
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- **Child Support Factsheet 2:**
Taking action to dispute paternity
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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