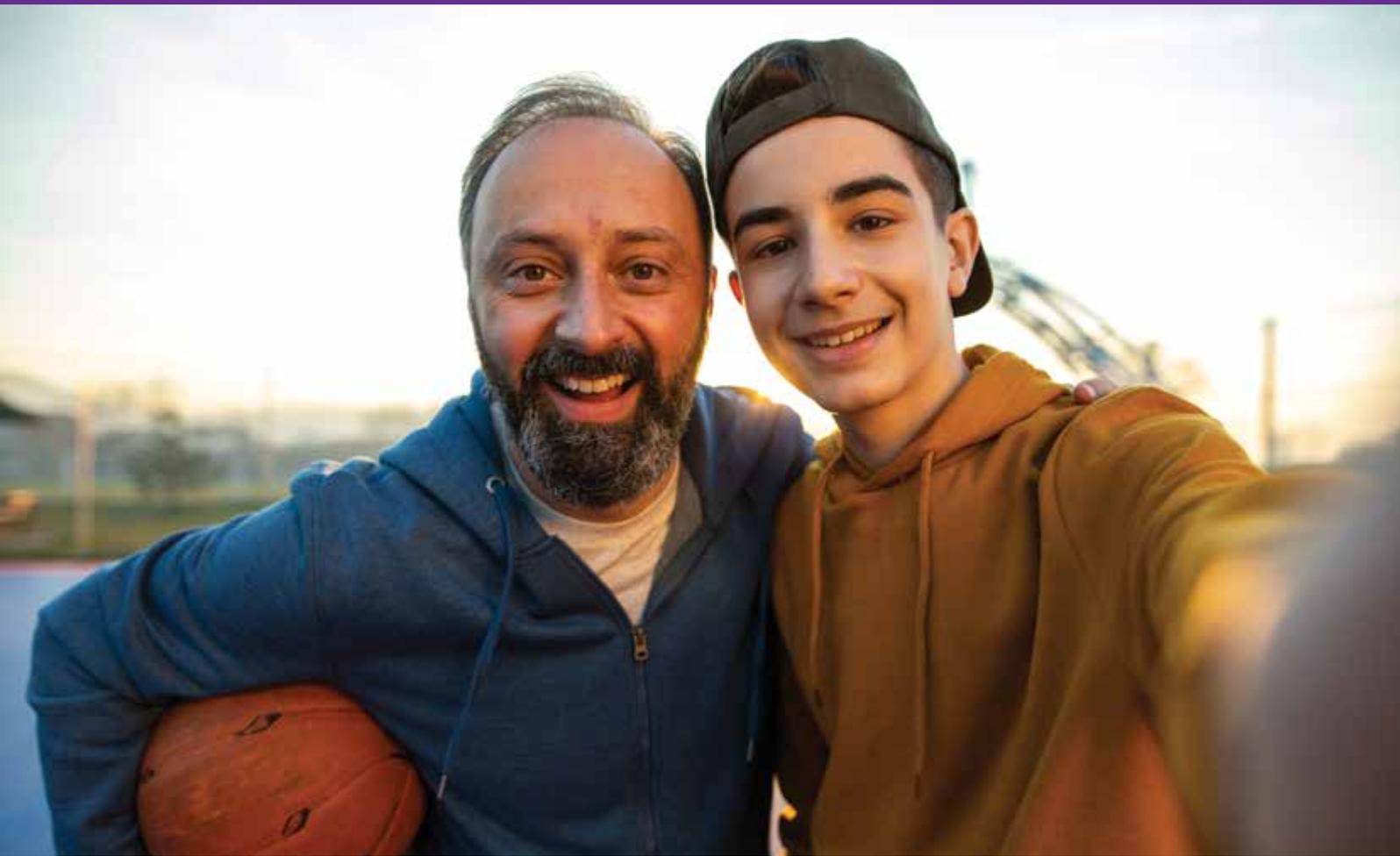


Applying to court for a change of assessment



CHILD SUPPORT FACTSHEET 3

If you have special circumstances that make your child support assessment unfair, you may be able to apply to Services Australia: Child Support ('Child Support') for a 'Change of Assessment'.

Child Support cannot change assessments that are older than 18 months. If you need to apply to change older assessments you must apply to a court for leave. The court can either grant leave to Child Support to change the assessment, or can grant leave and then also consider the application to change (or depart from) the assessments itself.

In deciding whether to grant leave, the court must consider:

- any reasons for your delay in seeking a change to the child support assessment and
- any hardship that would be caused to you and the other party to the child support assessment.

Note: The court cannot change assessments that are older than 7 years. For more information contact Child Support on **131 272** or visit www.servicesaustralia.gov.au/separated-parents.

Applying to court

Step 1: Get the court forms

Child support matters are generally started in the [Federal Circuit and Family Court of Australia](http://www.fcfcoa.gov.au) (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 **financial statement** providing full disclosure of your financial circumstances.
- A financial questionnaire.

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 will need to set out the orders you would like the court to make. The court will need to know exactly which period you are seeking to change.

The following orders are examples of orders you might seek but note that each case is different and you should therefore seek legal advice about the most appropriate orders to seek.

Sample orders

To ask for leave to apply to Child Support for a change to an assessment that is older than 18 months:

- That pursuant to section 112 of the *Child Support (Assessment) Act 1989*, leave is granted for the Child Support Registrar to make a determination under section 98S of that Act in relation to assessments of child support payable by the applicant [name] to the respondent [name] for the children [names and dates of birth] for the period from [date] to [date].

To ask the court to grant leave and also consider the change to the assessment itself:

- That pursuant to section 112 of the *Child Support (Assessment) Act 1989*, leave is granted to depart from assessments of child support payable by the applicant [name] to the respondent [name] for the children [names and dates of birth] for the period from [date] to [date].
- Pursuant to section 118 of the *Child Support (Assessment) Act 1989*. That for the period [date] to [date], the annual rate of child support payable by the applicant [name] to the respondent [name] for the children [names and dates of birth] be set at [\$X] or
- The pursuant to section 118 of the *Child Support (Assessment) Act 1989* that for the period [date] to [date], the child support income of the applicant [name] be set at [\$X].

An **affidavit** is a written statement setting out the evidence to support your application in your own words. Your affidavit should attach copies of the Child Support assessments you want to change. If you don't have these you can get copies by contacting Child Support on **131 272**. Your affidavit should also address the following matters:

- A brief history of your relationship with the other party and when the child support assessment was made.
- The reasons why you did not apply for a change of assessment sooner (eg the other parent had income or financial resources you were not aware of, or you were in hospital, or gaol etc).
- The hardship that would be caused to you if you were not granted leave (eg you cannot pay rent or other essential bills).
- Any other matters relevant to your application.

For more information about preparing an affidavit visit the court website:

www.fcfsco.gov.au.

Your **financial statement** must provide full disclosure of your financial circumstances.

Your affidavit and financial statement must 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.

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/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) 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.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 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 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.

The court may:

- deal with the application on the first date
- adjourn the application to be heard on another day or
- make directions for you and/or the other party to file more material.

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.

Important: If the court grants leave for Child Support to consider a change to the assessments, you will then need to apply to Child Support. You should attach a copy of the court's order granting you leave. Just because the court has granted leave, does not mean Child Support will change the assessment in the way that you want.

Can I stop paying child support in the meantime?

If you want to reduce or stop paying child support while your court application is being considered, 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. (See Factsheet 4 for more information about stay orders).

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.

If you are required to undergo DNA testing, you should seek an adjournment of at least 2 months for the testing to occur and for a report to be prepared.

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

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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Order brochures online at:

www.legalaid.nsw.gov.au/publications

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