

September 2010

# Child support & parentage testing

This booklet is for anyone who has a child and is not living with the other parent



 **Victoria  
Legal Aid**

Lawyers And  
Legal Services

Do you need this booklet in a different format?

Please ring us on 03 9269 0223 so we can talk with you about what you need.

Produced by Victoria Legal Aid

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Melbourne 3000

Telephone 9269 0120 or country callers 1800 677 402

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

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### Changes to the law

The law changes all the time. To check for changes you can:

- call the Victoria Legal Aid Legal Information Service on 9269 0120 or 1800 677 402 (country callers)
- read the 'new law' section on the Victoria Legal Aid website at [www.legalaid.vic.gov.au/newlaw.htm](http://www.legalaid.vic.gov.au/newlaw.htm)
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

ISBN 978 1 921180 86 6

Printed on recycled paper consisting of 50% post consumer waste and 50% certified fibre from controlled wood sources.

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## What this booklet covers

### Who this booklet is for

This booklet is for anyone who has a child and is not living with that child's other parent. It also has information about what is needed to prove whether a person is or is not a parent of a child.

### What this booklet covers

This booklet includes information on child support and child maintenance, how to apply to the Child Support Agency, child support assessments, and parentage testing.

### Getting more help

Any relationship breakdown is stressful, especially when there are children involved. You might also find it difficult to cope financially. Making decisions at this time is not easy, but there is help available. Getting legal advice and other support can help you understand what choices you have.

Interpreters can also be arranged.

Talking to a lawyer does not necessarily mean you have to go to court, although lawyers can help you do this if you need to. If possible, try and talk to the other parent about making arrangements for the future. If you can agree this can be better for everyone, especially the children.

However, get legal advice before signing any document.

### Victoria Legal Aid

We are a state-wide organisation that helps people with their legal problems. We focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

We have lawyers in offices in most major metropolitan and country regions. We also fund private lawyers to provide legal services to the public.

We can help you with your legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health, debt and traffic offences.

Call us to find out how we can help you on 9269 0120 or 1800 677 402 (country callers).

### What the law says

Each parent has a duty to financially support their child, even if the parents were never in a relationship.

This duty exists whether or not a parent spends time with their child. The amount of time a parent spends with their child however, can affect the amounts paid. Parents can apply for court orders to spend time with their child.

To make an appointment with the Child Support Legal Service call 9269 0120 or 1800 677 402 (country callers).

See 'Where to get help' at page 19.

## Child support and child maintenance

### What is child support?

Child support payments are made by one parent to the other to help with the costs of a child. These payments are separate from any parenting or other Centrelink and family assistance payments a parent may get. However, child support payments can affect how much you are paid by Centrelink and the Family Assistance Office.

### What is child maintenance?

Child maintenance orders used to be made if you separated before 1 October 1989 and no child of the relationship was born after that date. Child maintenance orders were no longer made after 30 September 2007 as these children will have turned 18.

If you had a child maintenance order you can get information and help from the Child Support Legal Service, a community legal centre or the courts.

See 'Where to get help' at page 19.

This booklet talks about child support.

### What is the Child Support Agency?

The Child Support Agency (CSA) is a government organisation that helps parents take responsibility to financially support their children.

It does this by:

- registering the details of parents
- working out how much parents should pay
- collecting payments
- explaining the Child Support Scheme.

### How do I organise child support?

Child support can be arranged:

- by agreement between parents
- through the Child Support Agency.

Child support can be collected:

- privately
- by the Child Support Agency.

If parents can agree between themselves the Child Support Agency does not have to be involved. If you prefer, the Child Support Agency can work out the amount to be paid but you can transfer the amounts privately. Keep receipts for private payments you make or receive.

Agreements should be signed and in writing and can be registered with the Child Support Agency.

### Types of agreement

A binding agreement can be made for any child support amount, including amounts that are less than the Child Support Agency would calculate. Both parents must get legal advice separately before making one. Each parent must use a different lawyer.

A limited agreement includes an amount that must be equal to, or more than the amount calculated by the Child Support Agency. You do not need to get legal advice to make a limited agreement.

Your Family Tax Benefit Part A may be worked out using a different amount than the child support amount in your private agreement.

You must apply for child support through the Child Support Agency if you claim more than the base rate of Family Tax Benefit, unless there are special circumstances.

Check with Centrelink.

## Applying to the Child Support Agency

Either parent can apply to have their child support worked out. This is called an assessment. Call the Child Support Agency and ask to apply for a child support assessment. You can also apply online at [www.csa.gov.au](http://www.csa.gov.au)

If you have children from a previous same-sex relationship, you can now apply for child support. Your application for child support will begin after 1 July 2009. Contact the Child Support Agency for more information.

### What do I need to prove to get child support?

You need to show that:

- you have at least shared care of the child
- the other person is the natural or adoptive parent.

### What if the other parent says he's not the father?

The child support legal service can help you by writing to the father. We ask the father to sign a document agreeing he is the father, or to take a parentage test. If he refuses, we can help you to take him to court.

If there is a 'presumption of parentage' you may not need to do these things.

### What is proof of parentage?

Proof can be in one of three ways:

- A person can sign a statutory declaration agreeing that he is a parent of the child. A statutory declaration is a formal written statement, signed in front of a legal witness.
- A person can sign a form telling the Registry of Births, Deaths and Marriages that he is a parent. This means his name will be put on the birth certificate.
- A court can make an order to allow an assessment of child support to be made because a person is a parent of the child.

### What is a presumption of parentage?

There is a presumption of parentage if:

- the child was born during a marriage
- you lived together for a certain time before the child was born (if this applies to you, it is important to get legal advice)
- a person is named as a parent during court action or on a birth certificate
- a person has signed an 'acknowledgment of paternity'
- a person has adopted the child.

### What if I think I am not the father?

#### How can I question an assessment?

If you get a Child Support Agency assessment notice to pay child support and you do not agree that you are the father of the child, you can apply to court. You will need to tell the court why you believe that you are not the father. You must apply within 56–60 days of being told of the assessment, or later if the court agrees. The time limit depends on which court you use. Get legal advice if you wish to question an assessment.

#### Do I have to go to court?

No. If both you and the person asking for child support agree to parentage testing and:

- you accept responsibility to pay child support if you are shown to be the father
- you have no responsibility to pay child support if you are not the father.

Get legal advice after you get the test results.

#### Can the court make me have a parentage test?

The court can order you to have a test but not physically force you.

However, if you do not take a court-ordered test the court can still make a decision and you may be named as (declared) the father.

## About parentage testing

### What is parentage testing?

It is a test to help prove you are a parent. A small sample of bodily fluid (such as from a mouth swab) from the mother, the child and the man is tested. A scientific report is prepared.

DNA testing is generally accepted as being the most accurate testing method available. The result of the test can show that a man is highly likely to be the father or is not the father.

### Which testing laboratories can be used?

The courts will only accept the results of 'accredited laboratories' set out in a full report. These laboratories have met certain conditions set out by law. Contact Victoria Legal Aid for more information.

### What does it cost?

The cost of testing three people and a full report is approximately \$700 - 800 (including GST). If there are more than three people to be tested, for example with twins, there is an extra charge for that person.

### Who has to pay?

If you are getting help from the Child Support Legal Service you may not have to pay for testing or legal help. Ask the service about when you may have to pay costs.

If you said that you were not the father, you may be asked to pay for testing. If you pay and are not the father you will usually get a full refund if this was agreed to before the test.

### How long will it take?

Parentage testing takes about one month. However, if court orders for child support are required, proving parentage (or not) may take about four months. If you get Centrelink payments, tell them of your court action.

### How is testing done?

The laboratory must have samples, usually a mouth swab from the mother, man and child (or children). Appointments are made for each person to give their samples at different dates and times.

Before testing you must fill in a form about any illnesses or medical procedures you have had which may affect the test. The main carer swears or affirms for the child (or children). Each person filling in a form must sign it and declare that it is correct in front of a witness.

You must attach one passport-sized photograph to the form and give a second photograph to the person collecting the sample. They will sign it to say that the photograph is of the person who gave the sample.

### What happens when the report is received?

You may need to go to court.

A parentage testing report alone may not be enough for the Child Support Agency to:

- make an assessment of child support
- end an assessment of child support.

Get legal advice after you get the report.

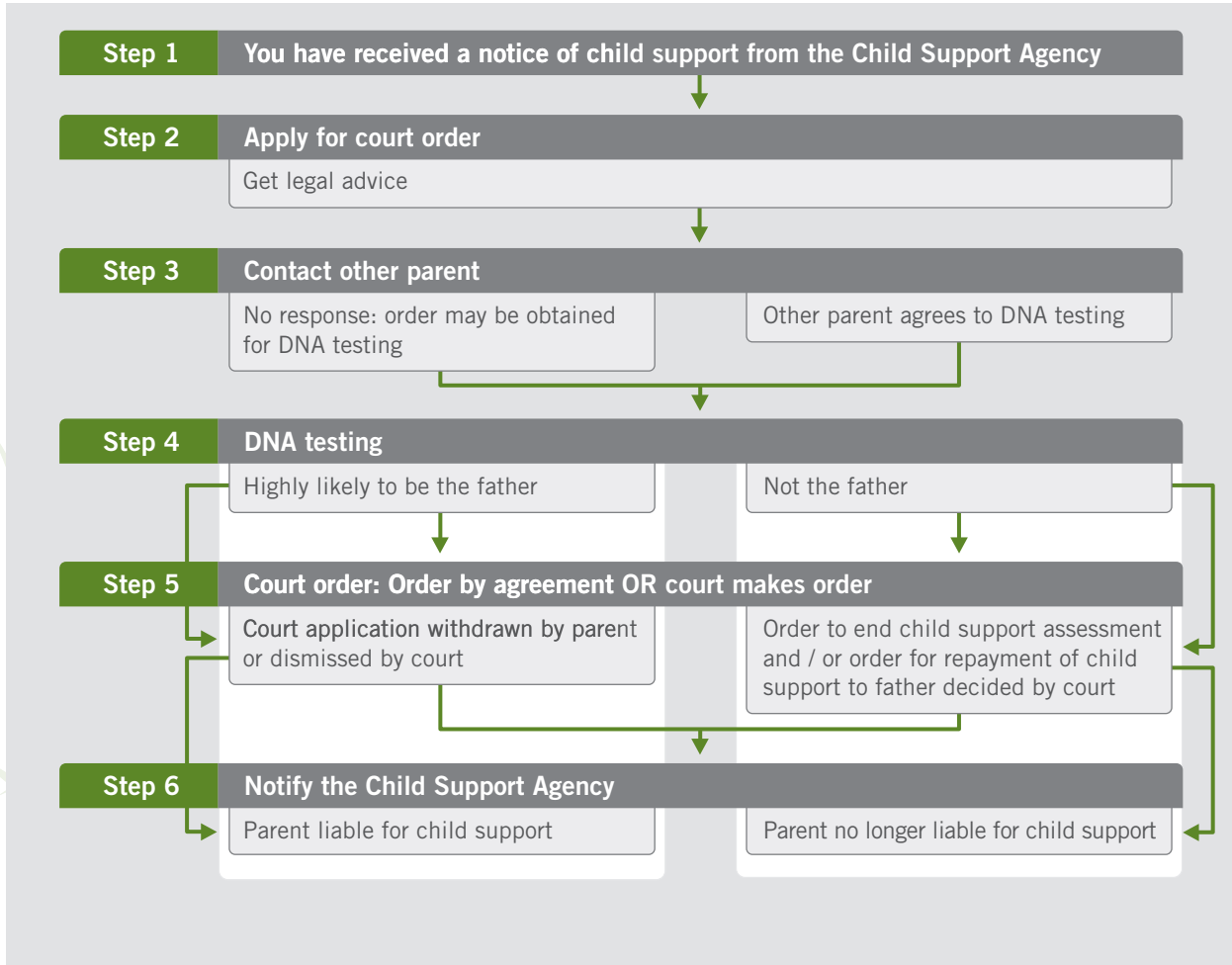
### Can the birth certificate be changed with a parentage testing report or a court order?

Yes, in some cases. Contact the Registry of Births, Deaths and Marriages to find out how to do this.

See 'Where to get help' at page 19.



## Steps for the father to stop child support where parentage is questioned



Steps for the father to stop child support where parentage is questioned

## Child support assessments

### How is child support calculated?

Child support has changed. The Child Support Agency works out child support by using a new formula. The formula looks at:

- how much time each parent cares for the children
- the ages and costs of the children
- the incomes of each parent
- any other children from a second family in the care of either parent.

The formula may be changed for certain cases. The income of new partners is usually not taken into account. The amount is calculated for up to 15 months. This is known as an annual rate and is used to work out a regular payment (usually monthly). This is why payments are still paid over periods when a child may be with a paying parent, for example school holidays.

For more information on how child support has changed, see our child support factsheets at [www.legalaid.vic.gov.au/publications](http://www.legalaid.vic.gov.au/publications) or order these by calling 9269 0223.

### Can I also claim childbirth expenses?

You may be able to make a separate court application to claim childbirth expenses within 12 months of your child's birth. Get legal advice about how to do this.

### Can child support be changed?

Yes. Contact the Child Support Agency as soon as your situation or the other parent's situation changes. Changes could include care for the children, living arrangements or income. This may affect payments. Often the Child Support Agency will only change the payments from the date of your call.

### What is a Change of Assessment?

This is a more formal application to change your assessment. The Child Support Agency may suggest that you apply if your situation is more complex. To do this you must show that there are special circumstances, and that you have legal reasons for applying. You must show that the change would be fair to you and the other parent.

Get legal advice if you want a Change of Assessment.

The other parent will be told of your application to change your assessment. The Child Support Agency will arrange a meeting to talk about your application.

### Can a Change of Assessment be backdated?

A Change of Assessment may be backdated up to 18 months from the date of application, or up to seven years by applying to the court.

### What if the Child Support Agency will not change my assessment?

You may object to the Child Support Agency's decision. If your objection is not allowed, you can apply to the Social Security Appeals Tribunal to review the decision within 28 days, or longer by asking for an extension. Get legal advice about how to do this.

See 'Where to get help' at page 19.

## Child support payments

### Will child support affect my Family Tax Benefit?

Yes. If you receive child support, your Family Tax Benefit will be affected by:

- your parenting arrangements
- both parents' income levels
- your private child support agreement if you have one
- your second family or families.

If you claim more than the base rate of Family Tax Benefit Part A, any child support you receive may also affect how much you get paid. Contact Centrelink for more information.

Victoria Legal Aid has factsheets on how child support affects Family Tax Benefit Part A. You can get these at [www.legalaid.vic.gov.au/publications](http://www.legalaid.vic.gov.au/publications) or by calling 9269 0223.

### What if the other parent will not pay?

You can take action through:

- the Child Support Agency
- a private court application.

Contact the Child Support Agency to ask for collection of payments.

You can also get legal help. You may have to pay legal costs for court action.

See 'Where to get help' at page 19.

### How can I be sure that my payments will go to supporting my child?

If you have less than 14% care of the child, you can pay 30% of your child support directly for:

- child care, kindergarten or school fees
- medical or dental fees
- rent, bond, mortgage, utilities of the other parent
- costs of car maintenance of the other parent.

Keep receipts to send to the Child Support Agency.

Other direct payments may be made if the other parent agrees.

### Do I still have to pay if I disagree with the assessment?

If you have been assessed to pay child support and you disagree with the assessment, you may be able to apply for a stay order.

A stay order temporarily stops the Child Support Agency from:

- collecting some or all child support from you
- paying some or all child support to the other parent.

You can apply for a stay order if you are waiting for a decision on:

- your application to change your assessment
- your objection to the Child Support Agency
- your application to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal
- your court application.

Get legal advice about how to do this.

See 'Where to get help' at page 19.

## How can the Child Support Legal Service help?

The Child Support Legal Service helps people who get child support or who pay child support with:

- their child support problems
- any parentage issues.

We may be able to:

- give information and legal advice
- contact the other parent where parentage is questioned to get agreement about DNA testing
- arrange for each parent and child to have DNA testing
- help you to change an assessment
- help you to object to decisions made by the Child Support Agency
- help you to apply to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal
- help you to get a court order
- prepare court documents
- arrange court representation if you need it.

We may be able to help you if:

- you get a Centrelink benefit
- you meet Victoria Legal Aid's guidelines for getting assistance.

The Child Support Legal Service gives confidential advice and legal help. It is independent from Centrelink and the Child Support Agency.

Contact the Child Support Legal Service on 9269 0120 or 1800 677 402 (country callers).

## Where to get help

### If you need an interpreter



Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450

### If you are deaf or have a hearing or speech impairment



Use the National Relay Service to phone any of the agencies (including Victoria Legal Aid) in this section. This is free. For more information about the NRS visit [www.relayservice.com.au](http://www.relayservice.com.au)

**TTY users:** Call 133 677 and then ask for the phone number you need. Include the area code.

**Speak and Listen users:** Call 1300 555 727 and then ask for the phone number you need. Include the area code.

**Internet relay users:** Connect to [www.iprelay.com.au/call/index.aspx](http://www.iprelay.com.au/call/index.aspx) and then ask for the phone number you need. Include the area code.

## Victoria Legal Aid

### Legal Information Service

Tel: 9269 0120 or 1800 677 402 (country callers)

Arabic: 9269 0127      Persian (Farsi): 9269 0123  
Croatian: 9269 0164      Polish: 9269 0228  
Greek: 9269 0167      Serbian: 9269 0332  
Italian: 9269 0202      Ukrainian: 9269 0390

Monday to Friday between 8.45 am and 5.15 pm

You can also get an interpreter from the Translating and Interpreting Service if you speak another language. Call 13 14 50 and ask to be put through to Victoria Legal Aid.

### Local offices

We have offices all over Victoria. See the back cover for office locations and phone numbers.

### Website

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## Roundtable Dispute Management

Once parentage issues have been sorted out, Legal Aid clients and their families may be able to use Victoria Legal Aid's Roundtable Dispute Management (RDM) service, to work out a parenting plan. You are always encouraged to try to sort out your family law dispute before, during or after you go to court.

Further information is available from your lawyer or from Victoria Legal Aid's Legal Information Service on 9269 0120 or 1800 677 402 (country callers).

## Federation of Community Legal Centres

Call to find your nearest community legal centre.

Tel: 9652 1500

[www.communitylaw.org.au](http://www.communitylaw.org.au)

## Victorian Aboriginal Legal Service

Tel: 9419 3888 or 1800 064 865 country callers (24 hours)

## Law Institute of Victoria (legal referrals)

Tel: 9607 9311

## Courts

### Family Court

Tel: 1300 352 000

### Federal Magistrates Court

Tel: 1300 352 000

### Magistrates' Court of Victoria

Tel: 9628 7777 (Melbourne) or 1223 directory assistance to find your nearest court location.

## Government

### Centrelink

Tel: 13 61 50 (Family Assistance Office) or  
13 12 02 (multilingual line)

### Child Support Agency

Tel: 13 12 72

### Department of Human Services (Child Protection)

Tel: 13 12 78

### Registry of Births Deaths and Marriages

Tel: 1300 369 367

### Police (emergency)

Tel: 000

## Family violence services

### Women's Domestic Violence Crisis Service

Tel: 9322 3555 or 1800 015 188 (24 hours)

### Domestic Violence Resource Centre Victoria (DVRC)

Tel: 9486 9866

### Immigrant Women's Domestic Violence Service

Tel: 9898 3145

### Men's Referral Service

Tel: 9428 2899 or 1800 065 973

### Family Relationships Advice Line

Tel: 1800 050 321

### Kids Help Line

Tel: 1800 551 800

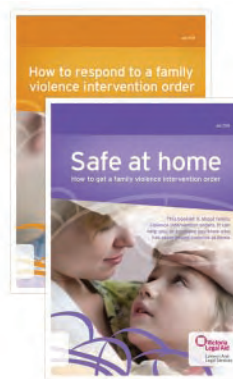
### Parentline

Tel: 13 22 89

## More information

Victoria Legal Aid has free booklets with legal information on topics such as intervention orders, police powers, family law and going to court.

Visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) to order or download or telephone 9269 0223 to find out more.



Family violence intervention order publications

How to respond to a family violence intervention order (booklet)

Safe at home: how to get a family violence intervention order (booklet)



Child support fact sheets

Child support, Family Tax Benefit and your child care levels

Organising child support and care arrangements for your children

# Child support & parentage testing

## **Victoria Legal Aid Legal Information Service**

Tel: 9269 0120 or country callers 1800 677 402

### **Offices**

#### **MELBOURNE**

350 Queen St  
Melbourne VIC 3000  
Tel: 9269 0120  
Country callers: 1800 677 402

#### **Suburban offices**

#### **BROADMEADOWS**

North western suburbs  
Level 1, Building 1  
Broadmeadows Station Centre  
1100 Pascoe Vale Rd  
Broadmeadows VIC 3047  
Tel: 9302 8777

#### **DANDENONG**

Westernport region  
Level 1, 9-15 Pultney St  
Dandenong VIC 3175  
Tel: 9767 7111

#### **FRANKSTON**

Peninsula region  
Cnr O'Grady Ave & Dandenong Rd  
Frankston VIC 3199  
Tel: 9784 5222

#### **PRESTON**

North eastern suburbs  
42 Mary St  
Preston VIC 3072  
Tel: 9416 6444

#### **RINGWOOD**

Outer eastern suburbs  
23 Ringwood St  
Ringwood VIC 3134  
Tel: 9259 5444

#### **SUNSHINE**

Western suburbs  
1/474 Ballarat Rd  
Sunshine VIC 3020  
Tel: 9300 5333

#### **Regional offices**

#### **BALLARAT**

Central Highlands region  
Area A, Level 1  
75 Victoria St  
Ballarat VIC 3350  
Tel: 5329 6222  
Toll free: 1800 081 719

#### **BENDIGO**

Loddon-Campaspe region  
424 Hargreaves St  
Bendigo VIC 3550  
Tel: 5448 2333  
Toll free: 1800 254 500

#### **GEELONG**

Barwon region  
Level 2, 199 Moorabool St  
Geelong VIC 3220  
Tel: 5226 5666  
Toll free: 1800 196 200

#### **HORSHAM**

Wimmera region  
29 Darlot St  
Horsham VIC 3400  
Tel: 5381 6000  
Toll free: 1800 177 638

#### **MORWELL**

Gippsland region  
Cnr Chapel & George St  
Morwell VIC 3840  
Tel: 5134 8055

#### **BAIRNSDALE**

Gippsland region (branch office)  
101A Main St  
Bairnsdale VIC 3875  
Tel: 5153 1975

#### **SHEPPARTON**

Goulburn region  
36-42 High St  
Shepparton VIC 3630  
Tel: 5823 6200  
Toll free: 1800 119 918

#### **WARRNAMBOOL**

South Coast region  
185 Fairy St  
Warrnambool VIC 3280  
Tel: 5559 7222  
Toll free: 1800 651 022

### **Publication orders**

To download or order our publications in English or other languages go to [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

If you need help ordering online please call Victoria Legal Aid on 9269 0223