

August 2018

Child support and parentage testing

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



Do you need this booklet in a different format?

Please ring us on (03) 9269 0234 and ask for Publications. We can talk with you about what you need.

Produced by Victoria Legal Aid

570 Bourke Street

Melbourne 3000

For help with legal problems, call Legal Help on 1300 792 387

For business queries, call (03) 9269 0234

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Disclaimer: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

Changes to the law

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

- call Victoria Legal Aid's Legal Help phone line on 1300 792 387
- visit Victoria Legal Aid's website at www.legalaid.vic.gov.au

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Victoria Legal Aid

Victoria Legal Aid is a government-funded agency set up to ensure that people who cannot afford to pay for a private lawyer can get help with their legal problems. We provide free information for all Victorians, family dispute resolution for disadvantaged families, provide lawyers on duty in most courts and tribunals in Victoria, and fund legal representation for people who meet our eligibility criteria. We help Victorian people with legal problems about criminal matters, family breakdown, child protection, family violence, child support, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

About this booklet

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, parentage testing (a test that identifies the biological parents of a child), how to apply to the Department of Human Services (DHS) Child Support for child support assessments and payments, and how to question or change a child support assessment, payment or debt.

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 to 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.

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, may affect the amounts paid.

Children have a right to a relationship with each parent as long as they are safe. Parents can try to come to an agreement or apply for court orders to spend time with their child.

To check eligibility for an appointment with the Child Support Legal Service fill out an online form at www.legalaid.vic.gov.au/childsupportenquiry or call 1300 792 387.

See 'Where to get help' on page 22.

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.

What does the Department of Human Services (DHS) Child Support do?

DHS (Child Support) 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 DHS (Child Support).

Applying to DHS (Child Support)

Either parent can apply to have their child support worked out. This is called an assessment. Call DHS (Child Support) on 13 12 72 and ask to apply for a child support assessment. You can also apply online at www.humanservices.gov.au.

If you have children from a previous same-sex relationship, you can apply for child support. Contact DHS (Child Support) for more information.

You must apply for child support through DHS (Child Support) if you claim more than the base rate of Family Tax Benefit, unless there are special circumstances. You have 13 weeks to apply for child support after you separate. If you do not apply, your Family Tax Benefit can be reduced or stopped. The Child Support Legal Service can help you get child support.

Special circumstances include:

- you don't know the other parent
- you don't know where the other parent is
- you fear violence from the other parent, or they have threatened you

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 apply for a court order.

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 DHS (Child Support) 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. Delays can have a serious effect on your case. Get legal advice if you wish to question an assessment.

Do I have to go to court?

If both you and the person asking for child support agree to parentage testing, there may be no need to go to court. Get legal advice after you get the test results, as documents may need to be signed to confirm:

- 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.

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 if 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 \$750–850 (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 six 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. Each person must sign and declare that it is correct in front of a witness. The main carer has to complete and sign for the child (or children).

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?

Get legal advice as you may need to go to court. DHS (Child Support) may need more than a parentage testing report to:

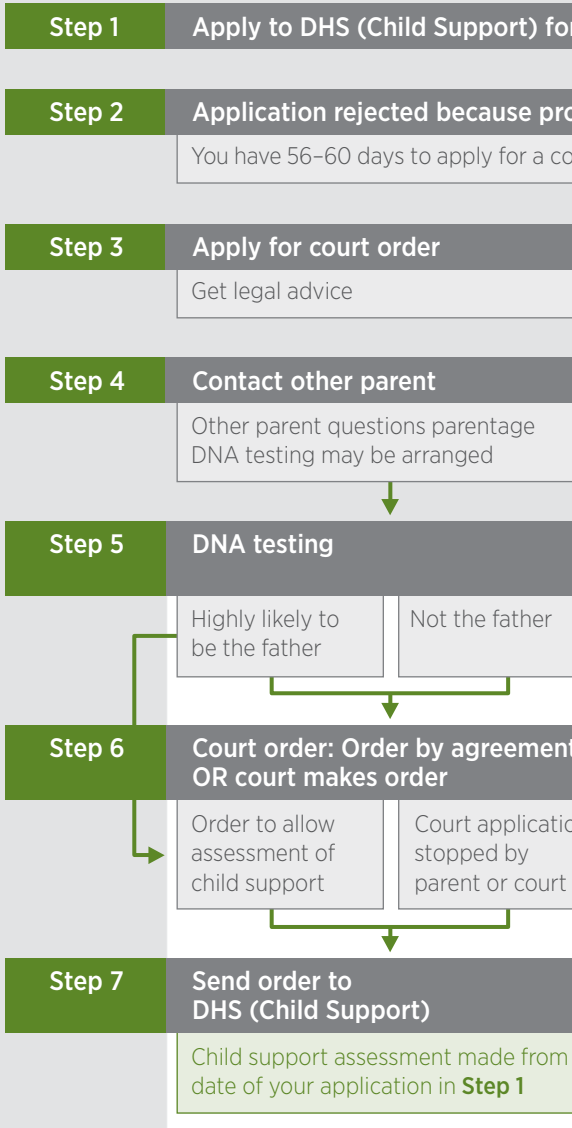
- make an assessment of child support
- end an assessment of child support.

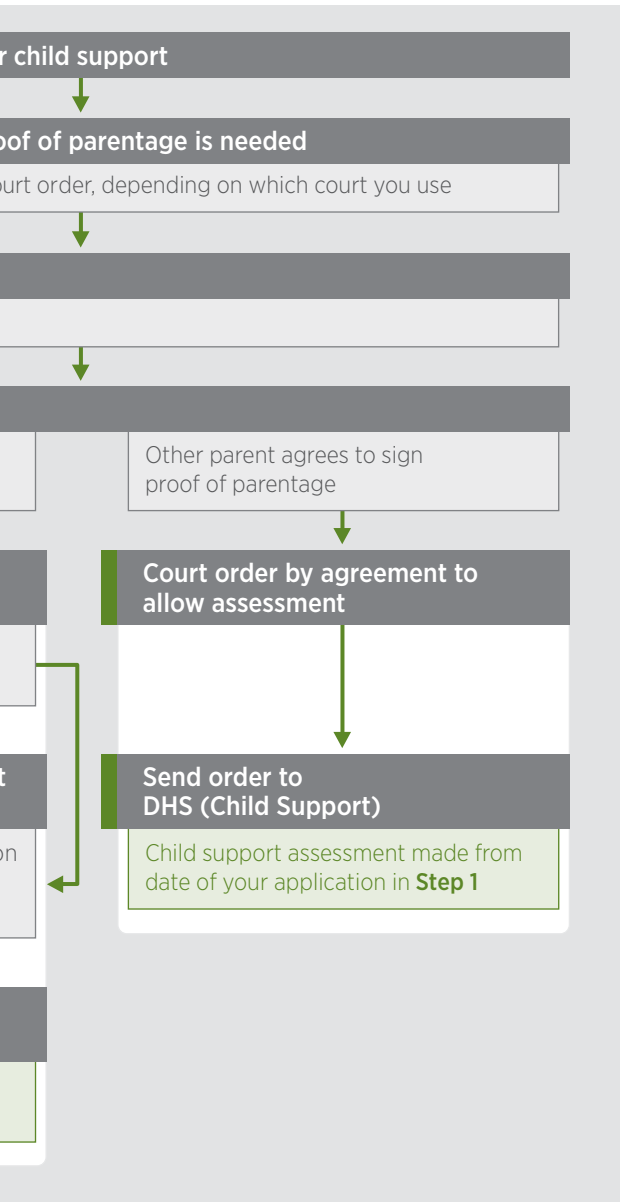
Can the birth certificate be changed with a parentage testing report or a court order?

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

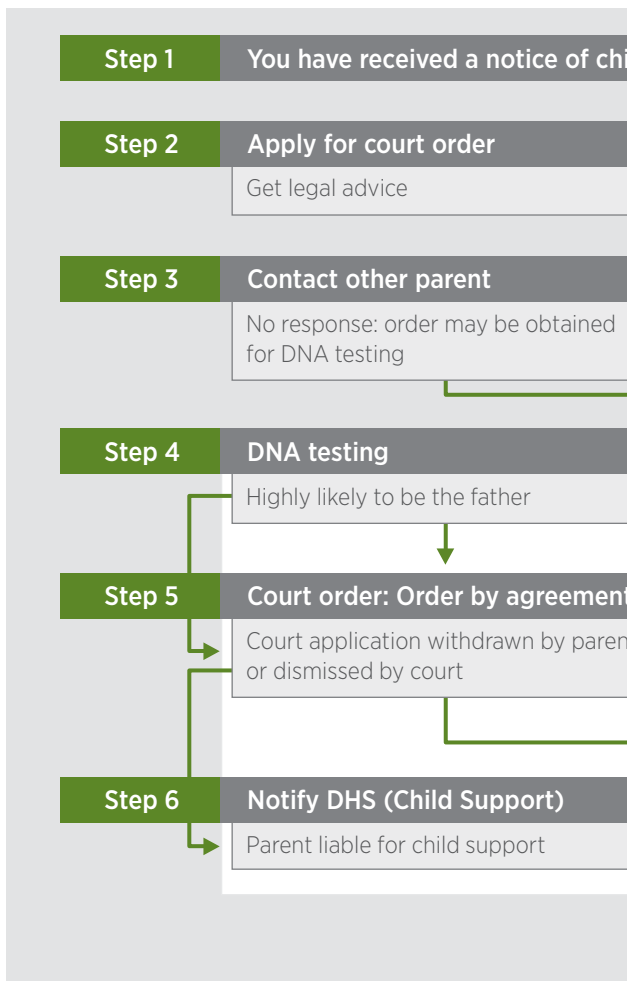
See 'Where to get help' on page 22.

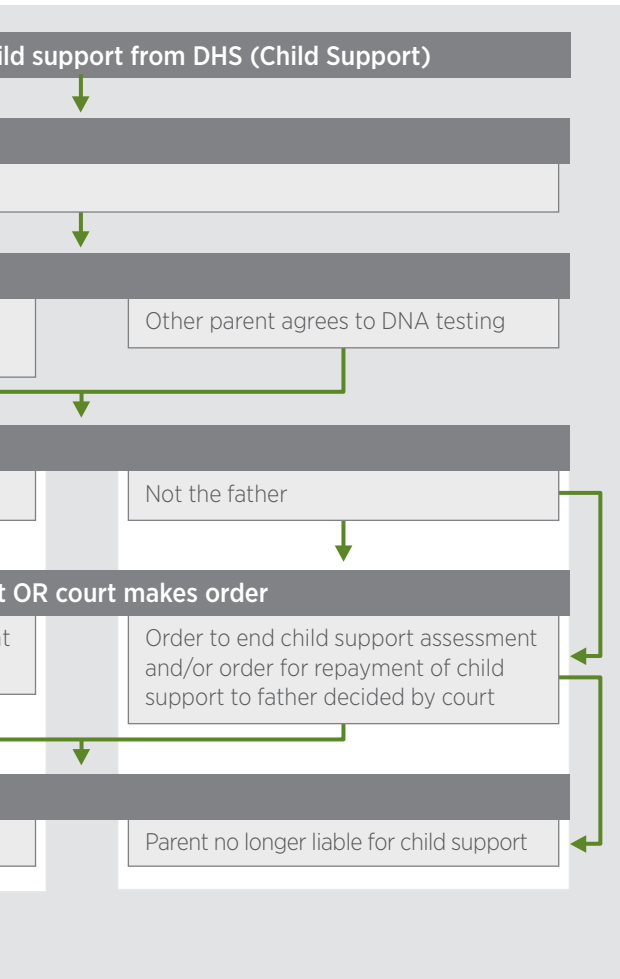
Steps for the mother to get child support where proof of parentage is needed





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 collected?

Child support can be collected:

- privately. For more information on private agreements, [see page 15](#).
- by DHS (Child Support).

How is child support calculated?

When working out child support that you get or pay, DHS (Child Support) looks at:

- both parents' incomes
- if you are supporting other children
- the costs of raising children (including their ages and the number of children)
- how much time both parents spend with the children (your 'levels of care').
- You can estimate how much your child support payments may be by searching for 'online estimators' on the DHS website (www.humanservices.gov.au). Select 'online estimators', then 'child support estimator' and click the launch button.

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.

Can I also claim childbirth expenses?

In some cases, 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. Tell DHS (Child Support) immediately of any change in circumstances for you, the children or the other parent. Some changes, such as care arrangements for the children, a new child or financial circumstances, can be notified by telephone to DHS (Child Support). Often they will only change the payments from the date of your call. Make sure you get a reference number when you speak to DHS (Child Support)

Do your tax returns every year. DHS (Child Support) and the Australian Taxation Office share their records. If you lodge a tax return late, your child support assessment for past years may change. You may have paid or been paid too much child support.

What is a change of assessment?

Other changes may require you to fill out an *Application to change your assessment – Special Circumstances* form. You must show that:

- there are special circumstances in your case
- you have legal reasons for applying, and
- the change would be fair to you and the other parent.
- Go to www.humanservices.gov.au and search for 'change your assessment' to find the application form.

The other parent is given a copy of your application and any supporting documents and they can respond. They can also make their own application. DHS (Child Support) will talk to both parents before making a decision.

Contact DHS (Child Support) to check if your case is appropriate for a change of assessment. You can't apply for a change of assessment if your case has ended. See 'Where to get help' on page 22.

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 DHS (Child Support) will not change my assessment?

You may object to the DHS (Child Support) decision within 28 days. If your objection is not allowed, you can apply to the Administrative 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' on page 22.

Can my child support arrears (debt) be reviewed/reduced?

If a parent does not make the required payments, lodges their tax returns late, or the assessment is incorrect, they may get a child support debt. In some circumstances, the parent can seek a review of the debt through DHS (Child Support) or the court system. Get legal advice about how to do this.

Private agreements

Parents can make their own agreements about child support. The agreement can be about how much, and in what form, child support should be transferred. Keep any receipts you make or receive in case there is a dispute about a private payment.

Agreements should be signed and in writing. Agreements can be registered with DHS (Child Support) who can collect the payments. There are two legal types of child support private agreements.

A binding agreement can be made for any child support amount, including amounts that are less than DHS (Child Support) would calculate. Both parents must get legal advice separately before making an agreement. Each parent must use a different lawyer. Binding agreements can only be ended in exceptional circumstances.

A limited agreement includes an amount that must be equal to or more than the amount calculated by DHS (Child Support). You do not need to get legal advice to make a limited agreement, however it is highly recommended.

Your Family Tax Benefit Part A may be worked out using a different amount than the child support amount in your private agreement. Ask Centrelink for your Family Tax Benefit to be paid using the 'disbursement method' to avoid any overpayment.

Child support payments

Will child support affect my Family Tax Benefit?

Yes. 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
- any child support you get or are assessed to get even if you haven't received the payments.

To avoid an overpayment of Family Tax Benefits, you should contact:

- Centrelink. Ask that your Family Tax Benefit is paid using the 'disbursement method' and
- DHS (Child Support). Ask to collect your child support payments.

Our website has information about how child support affects Family Tax Benefit Part A.

Go to www.legalaid.vic.gov.au and click on 'Find legal answers'.

What if the other parent will not pay?

You can:

- ask DHS (Child Support) to collect unpaid child support payments. Do this as soon as you can as you can usually only collect three months of unpaid payments. (up to nine months in exceptional circumstances)
- make a private court enforcement application, however you may have to pay legal costs. Do this as soon as you can, as it may affect your application. Keep bank statements to prove non-payment or underpayment.

See 'Where to get help' on page 22.

How does DHS (Child Support) recover unpaid child support?

DHS (Child Support) can recover payments by

- employer deductions
- enforcing tax return lodgement
- intercepting tax refunds
- issuing overseas travel bans
- court action
- bank account deductions
- Centrelink deductions
- collection through third parties.

Contact DHS (Child Support) for further information.

Can I ask the other parent to pay school expenses?

All parents are expected to pay public school expenses. Public school costs are part of the child support assessment. Where both parents want the child to attend a private school, private school fees may be applied for as a reason to change your assessment. [See](#) change of assessment information on page 13.

How can I make direct payments to support my child?

If you have less than 14 per cent care of the child, you can pay 30 per cent 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.

Other direct payments may be made if the other parent agrees. Send receipts to DHS (Child Support).

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

Yes. You may take court action to suspend your payments (stay order) if you are waiting for a decision on your:

- application to change your assessment
- objection to DHS (Child Support)
- application to the Administrative Appeals Tribunal
- court application.

A stay order temporarily stops DHS (Child Support) from:

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

A court will take into account how the parents or the children will be affected if a stay order is made or not.

Carefully consider if a stay application is appropriate as:

- there may be legal costs for court action
- if you are not successful the other parent may seek an order that you pay their legal costs
- a court hearing may take two months or more and
- DHS or the Administrative Appeals Tribunal may make a decision before the hearing.

Get legal advice before you apply. See 'Where to get help' on page 22.

Can child support continue when a child is 18 or over?

If your child turns 18 while they are in full-time secondary education, you can apply to DHS (Child Support) to extend the existing child support assessment until the last day of that school year. You must contact DHS (Child Support) before your child turns 18.

In some circumstances, you may have to apply for a court order if your child is continuing their study or has a disability. Get legal advice before your child turns 18.

See 'Where to get help' on page 22.

Family violence and child support

Financial or economic abuse is family violence.

Financial abuse can happen in the child support system by:

- avoiding paying child support
- misusing child support procedures and legal processes.

See 'Where to get help' on page 22.

How can the Child Support Legal Service help?

The Child Support Legal Service is part of Victoria Legal Aid. It gives legal help to people who get or pay child support. It is independent from Centrelink and DHS (Child Support).

How we can help you will depend on your legal problem and if you:

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

To check eligibility for an appointment with the Child Support Legal Service fill out an enquiry form at www.legalaid.vic.gov.au/childsupportenquiry or call 1300 792 387

We may be able to:

- give information and advice
- refer you to other organisations that can help
- give you a self-help kit
- contact the other parent where parentage is questioned to get agreement about DNA testing
- arrange for each parent and child to have DNA testing
- contact DHS (Child Support) to get or provide information about your case
- help you apply for or change an assessment
- help you object to decisions made by DHS (Child Support)
- help you seek a review of any child support arrears (debt)
- help you apply to the Administrative Appeals Tribunal
- help you get or stop a court order
- help you to apply for adult child or 'over 18' maintenance
- prepare court documents
- arrange court representation.

How can I get a lawyer to run my case?

If you have a legal problem and cannot afford a lawyer, we may be able to pay for a lawyer to help you. This is called a 'grant of legal assistance'.

Our funds are limited and demand for legal services is high. You can only get a grant of legal assistance if your legal problem and your financial circumstances meet our guidelines.

You can use a grant to:

- have a lawyer help you reach agreement or represent you in court
- go to our family dispute resolution service.

You may get help from a lawyer from the Child Support Legal Service, a community legal centre or a private law firm that does legal aid work.

Where to get help

Victoria Legal Aid

Legal Help

For free information about the law and how we can help you, call Legal Help on 1300 792 387

Monday to Friday, between 8.45 am and 5.15 pm

You can enquire about a child support appointment online at www.legalaid.vic.gov.au/childsupportenquiry

More information

More information is on our website at www.legalaid.vic.gov.au

Do you need help calling us?



Interpreter

Translating and Interpreting Service

Tel: 131 450



National Relay Service

TTY users: Call 133 677

Speak and Listen users: Call 1300 555 727

Internet relay users: See www.relayservice.gov.au

Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45 am to 5.15 pm.

See the back page for office locations.

All offices are accessible to people with a disability.

Victoria Legal Aid Family Dispute Resolution Service

Once parentage issues have been sorted out, Victoria Legal Aid clients and their families may be able to use Victoria Legal Aid's Family Dispute Resolution 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 on 1300 792 387.

Other legal services

Federation of Community Legal Centres

Call to find your nearest community legal centre.

Tel: (03) 9652 1500

www.fclc.org.au/

Aboriginal Family Violence Prevention and Legal Service

Tel: 1800 105 303

Law Institute of Victoria (legal referrals)

Tel: (03) 9607 9550

Victorian Aboriginal Legal Service

Tel: (03) 9419 3888 or 1800 064 865

Courts

Federal Circuit Court

Tel: 1300 352 000

Magistrates' Court of Victoria

Tel: (03) 9628 7777 (Melbourne) or 1023 directory assistance to find your nearest court location.

Government

Centrelink

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

Department of Human Services (Child Protection)

Northern Division Intake: 1300 664 977

Southern Division Intake: 1300 655 795

Eastern Division Intake: 1300 360 391

West Division Intake (Metropolitan) 1300 664 977

West Division Intake (rural and regional) 1800 075 599

After Hours Child Protection Emergency Service: 13 12 78

Department of Human Services (Child Support)

Tel: 13 12 72

Police (emergency)

Tel: 000

Registry of Births, Deaths and Marriages

Tel: 1300 369 367

Family and support services

Domestic Violence Resource Centre Victoria (DVRC)

Tel: (03) 9486 9866

www.dvrcv.org.au

Family Relationships Advice Line

Tel: 1800 050 321

www.familyrelationships.gov.au

Financial Counselling: National Debt Helpline

Tel: 1800 007 007

www.ndh.org.au

InTouch Multicultural Centre Against Family Violence

Tel: (03) 9413 6500 or 1800 755 988

www.intouch.asn.au

Kids Help Line

Tel: 1800 551 800

www.kidshelpline.com.au

Lifeline

Tel: 13 11 14

www.lifeline.org.au

MensLine Australia

Tel: 1300 789 978

www.mensline.org.au

Men's Referral Service (No To Violence)

Tel: 1300 766 491

www.ntv.org.au

Parentline

Tel: 13 22 89

www.education.vic.gov.au

Safe Steps

Tel: 1800 015 188

www.safesteps.org.au

Women's Information and Referral Exchange (WIRE)

Tel: 1300 134 130

www.wire.org.au

1800Respect

Tel: 1300 737 732

www.1800respect.org.au

Useful Victoria Legal Aid resources

To order publications

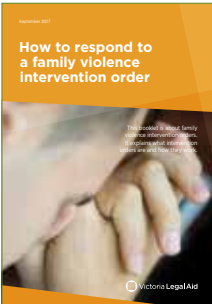
We have free booklets about the law in English and other languages. Visit www.legalaid.vic.gov.au to order or download booklets. Call (03) 9269 0234 and ask for Publications to find out more.

Our public law library

Open Monday to Friday, 9 am to 5 pm
570 Bourke Street, Melbourne.



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



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

Watch me on **YouTube**

Watch our community legal education videos.

Child support and parentage testing

Victoria Legal Aid

For help with legal problems, call Legal Help on **1300 792 387**
For business queries, call **(03) 9269 0234**

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