

What if you don't think you are the father of the child ?

The Child Support Agency (CSA) must be satisfied that you are the father of the child before it can make a child support assessment.

The CSA cannot be satisfied that you are the father unless **at least one** of the following applies:

- your name is on the birth certificate
- you have sworn a statutory declaration that you are the father of the child
- you were married to the mother at the time the child was born
- a court has made an order that you are the father of the child
- you were living together at any time from 44 weeks to 20 weeks before the birth of the child
- you have adopted the child

Can you object to the CSA's decision?

The CSA may have made a mistake if it relied on incorrect information from the mother of the child. For example, she may have advised the CSA that your name is on the birth certificate or that you were living together when the child was conceived. If this is wrong you should write to the CSA **within 28 days** of the date of the decision and point out the mistake. This letter is called an objection.

When do you need to apply to court?

You cannot object if you think the CSA's decision is wrong because you are not the father of the child. In that case, you can apply to a court for an order that the mother:

- is not entitled to a child support assessment because you are not a parent of the child,
- repay some or all of the child support you have already paid

What do you need to do?

You should file your application at court promptly after receiving the assessment from the CSA.

You only have a limited time from the time you

get your assessment letter to commence court proceedings (56 days in the Federal Magistrates Court and 60 days in the Family or Local Courts).

The court should be able to supply you with the necessary forms. Otherwise, visit the Family Court website at www.familylawcourts.gov.au

You need to file the following documents:

- an application
- an affidavit by you in support of your application, and
- a copy of the child support assessment

In the application you will need to write down the orders you are seeking on a final basis and on an interim basis.

(a) Final orders

You could ask the court to make the following final orders:

A declaration that pursuant to section 107 of the **Child Support (Assessment) Act 1989** [NAME OF MOTHER] is not entitled to an administrative assessment of child support for the child [NAME OF CHILD] because [YOUR NAME] is not a parent of the child.

That pursuant to section 143 of the *Child Support (Assessment) Act 1989*, [NAME OF MOTHER] pay the sum of [AMOUNT PAID IN CHILD SUPPORT] to the applicant within 28 days.

Your application must set out detailed evidence in support of your application. You should give a brief history of your relationship with the mother, and you should address the reasons you believe you are not the father of the child. You should also give reasons for the delay if your application is late. If you are seeking an order that the mother repay child support under section 143 you should also provide evidence to support this. 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.

(b) Interim orders

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

You could also seek interim orders “staying” the collection of child support. If the court grants a stay order the CSA is prevented from collecting child support from you until the matter is decided on a final basis. However, if you are found to be the child’s father, you must repay all the child support that would have been payable during the stay period. (See Fact Sheet 4 for further information about stay orders).

Alternatively you can ask the CSA to hold any child support you pay on trust until the paternity matter is determined. You do not need a court order to do this. You just need to forward a sealed copy of your court application to the CSA. You can ask the CSA more about this by calling 131 272.

What should you do with your court documents?

You must take the original and three copies of the documents to the court for filing. The court will return three sealed (stamped) copies to you and will give you a date to appear in court. You will need to serve the sealed copies on:

- the other party, and
- the CSA (this can usually be done by post)

The third copy is for your records.

The documents must be handed to the other party. You cannot do this yourself. You may choose to use a process server to serve the court documents (you will have to pay a fee for this). The person who serves the documents must complete an Affidavit of Service. More information about service is available on the Family Court’s website (www.familycourts.gov.au)

You should ensure the other party is served well before your matter is first in court.

What happens on the first court date?

You must attend court on the first court date. You should take all your paperwork with you to court, including your proof that the other party has been served. On the first court date you can ask the court to determine your interim application – that is for DNA parentage testing to take place and/or for child support payments to be stayed.

DNA testing – how does it work?

There are a number of laboratories authorised under the Family Law Regulations to conduct DNA testing. DNA testing can be costly. The court may order you pay the full cost up front, or may order that the cost be shared between you and the mother. After the testing is completed, you may be able to seek an order that the other party repay you the cost of testing, or your share of the testing. Similarly, the other party may be able to seek an order that you repay her share of the testing.

The DNA testing process can take up to 6-8 weeks.

When the results are available the judicial officer will read the report (you should take it with you to court) and can make appropriate orders. You should advise the CSA that final orders have been made. You should send CSA a copy of the court orders when you receive them.

What if a court has already made a child support declaration (s106A)?

You cannot make an application under section 107 in this case. You must appeal the section 106A order.

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This fact sheet provides basic information only and is not a substitute for legal advice. If you are likely to be involved in court proceedings or legal action, you should get advice from a lawyer. Lawyers can be obtained privately, through Legal Aid NSW or at Community Legal Centres. The Child Support Service of Legal Aid NSW may also be able to provide you with advice.