

Separating When Pregnant

This information is based on the law as at July 2010. It is written for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.

This tip sheet is for you if you are pregnant at the time of separation from your child's Father, or if you have never lived with your child's Father. You should read it together with the Centre's other tip sheets on *Parenting Orders, Child Support and Family Dispute Resolution*.

Do I have to allow the Father to see my newborn baby in hospital?

Having a baby can be a difficult and emotional time for most women. You would not normally be expected to organise for your baby to see their Father at this time unless you wanted to.

If your relationship with the Father is a good one, then you might feel OK about him visiting at the hospital for a short while to see your baby. If your relationship is not a good one, it will usually not be appropriate for him to see you and your baby at this very early stage.

Does the Father's name have to go on the birth certificate?

You can choose whether or not to put the Father's name on the birth certificate.

If you choose not to put the Father's name on the birth certificate, he may bring an application in the Court (usually the Federal Magistrates Court) for his name to be added. The Court, in the majority of cases, will find that it is in your child's best interests to have both his/her parents legally recognised in this way.

Even if the Father's name is not on the birth certificate, he can still bring an application in relation to your baby (see below).

Can the baby have my surname ?

You have to register your baby's birth at the Registrar General's Office within 60 days unless you have a "reasonable excuse" for the delay. You can put your surname down as your baby's surname. Just because your baby's Father is named on the birth certificate, does not mean that your baby has to have his surname. You may, however, choose to use the Father's surname or you can hyphenate the two names.

If you choose your own surname for your baby and the Father then wants the child to have his surname, he might bring an application in the Court to have the birth certificate changed. The Court will then consider the application for change of

surname and look at the effects of any change in the baby's surname and what surname is in your child's best interests.

Even if the Father's surname is the one used on the birth certificate, you can use your surname for the child if you do not intend to deceive anyone. However, you must enrol your child at school under the name which is on his/her birth certificate. There are certain exceptions, however, when students can be enrolled under alternative names or records can be changed.

What if the Father denies paternity?

You can apply to the Court for a declaration of paternity. The Court will draw certain presumptions about paternity if you and your baby's Father were either married, or living together during any time from 44 weeks to 20 weeks prior to your baby's birth.

You can also apply to the Court for parentage testing (also known as DNA testing). This will usually involve the taking of mouth swabs from you, the Father and your baby. Once the parentage test results have been provided to the Court, it can make a declaration as to paternity.

How soon can I, or the Father, apply for parenting orders?

You or the Father can apply when your child has been born. The Court will require a copy of your baby's birth certificate before it can accept your application. You will have to attend family dispute resolution and file a certificate about that, unless you are exempt. See the Centre's tip sheets on *Family Dispute Resolution* and *How Do I apply to the Federal Magistrates Court for a Parenting Order?*

Once an application has been filed, the other party will usually need to be served with a copy of it. This means that the Father cannot usually get an order from the Court without you being aware of his application and you having an opportunity to respond to it. It also means that *you* cannot usually get an order from the Court without the Father being aware of your application and having an opportunity to respond to it.

Will the Court order that my baby live with me?

In the vast majority of cases the Court is going to decide that it is in a newborn baby's best interests to be with his/her Mother. The Father will therefore only succeed in getting an order that your baby live with him if there is some very serious reason why you are not capable of looking after your baby yourself. The longer your baby lives with you, the harder it becomes for the Father to obtain an order that your baby should live with him.

What is the *usual* amount of time for a newborn baby to spend with their Father?

The time that a newborn baby should spend with the non primary care giver is usually limited and supervised (and therefore not overnight). If it is appropriate, you could supervise the visits yourself. If it is not appropriate, for example, because of domestic violence issues or you simply feel uncomfortable seeing the Father, then

the supervisor should be someone your baby is familiar with (for example, *your* Mother or Father).

As your baby gets older the amount of time that he/she spends with his/her Father would usually increase, but you may not want to allow too much time away from you too soon. Over time you may not need a supervisor as your baby and the Father get to know each other and you become comfortable about leaving your baby unsupervised with the Father.

Do I have to allow members of the Father's family to see my baby?

It will usually be in your child's best interests to spend some time with extended members of his/her family, such as grandparents.

It may be appropriate initially for the Father's parents to spend some limited time with your baby at the same time as he does. You may, however, want to suggest another occasion for them to visit for a short period of time.

What if the Father does not want to see my baby?

If the Father chooses not to see your baby, and you would like him to have an ongoing relationship with him/her, then you should try and get him to attend family dispute resolution with you to discuss this further.

What happens if I want a passport for my baby?

If you want to travel overseas with your baby you will need to get him/her a passport. In the majority of cases, you will need to ask the Father to sign the passport application. If he refuses to sign it, you will usually need to bring an application in the Court. In some exceptional cases it is possible to get the Minister for Immigration to issue a passport to a child without the consent of the other parent or a Court order.

Even if you already have a passport for your baby, in most cases you will still need to get the Father's approval before you travel overseas. If there is a parenting order in place, then you could be breaching that order by leaving the country. You also run the

risk of the Father lodging a *passport alert* with the Australian Federal Police at the airport. This would prevent you and your baby from leaving the country. If the Father refuses to give his consent, you can bring an application in the Court and seek the Court's permission to leave. See the Centre's tip sheet on *How do I apply to the Federal Magistrates Court for a Parenting Order?*

You will need to establish to the Court's satisfaction that it is in your baby's best interests to travel overseas with you. It would usually be expected that you offer the Father some compensatory time with your baby either before or after the holiday. You will also need to convince the Court that you do intend to return to Australia.

What if Care and Protection Services intervene?

If you have had some previous involvement with the Office for Children, Youth and Family Support (“Care and Protection Services”) for example, because of issues with drugs or alcohol abuse, they may want to assess whether your baby is in need of care and protection. If the Father can be located he will be advised of any proceedings by Care and Protection Services and be allowed to be involved in the proceedings.

When there is a Care and Protection Order through the Children’s Court, you cannot apply to the Family Court or the Federal Magistrates Court for a parenting order. See the Centre’s tip sheet *Child Protection in the ACT*.

What child support will I get from the Father?

Once your baby is born, you can apply to the Child Support Agency (CSA) for ongoing child support or make a child support agreement with the Father. The CSA calculates child support on a formula taking into account the taxable income of both parents and the amount of time the child is spending with each parent. If you receive a Centrelink benefit, you must apply for child support or make a child support agreement for at least the amount of the CSA assessment unless you obtain an exemption. See the Centre’s tip sheet *Child Support through the Child Support Agency*.

If the Father’s name is not on the birth certificate, the CSA will usually require him to sign a declaration of paternity form before they will collect child support from him. If he refuses to sign the declaration then you will usually need to bring an application in the Court for a declaration of paternity.

As well as applying for child support, you can also make an application to the Court for expenses associated with the birth of your baby. You can claim towards your maintenance for:

- a) two months *before* your baby’s birth (or earlier if you have to give up work upon medical advice) and
- b) three months *after* your baby’s birth

The sorts of costs which you can apply for include:

- things for your baby such as a cot, car-seat, clothes
- your medical expenses

How much the Father has to pay depends upon his income and capacity to pay.

You must bring this application within 12 months of your baby’s birth.

Where do I go for information and advice?

Child Support Agency

general enquiries:	13 1272
information service:	13 1107
change of assessment (review)	13 1141

You can also arrange to speak to a CSA officer. You need to make an appointment at least 5 working days in advance by either telephoning 131 272 or completing the form which is available on their website – <http://www.csa.gov.au>

As an alternative to speaking to a CSA officer (either in person or on the phone) you can use CSAonline, which is a new secure internet service available from the CSA's homepage.

Centrelink	13 6150
Care and Protection Services General Public Line	1300 556 729
Family Court and Federal Magistrates Court	6267 0511
Legal Aid Office (ACT)	
general enquiries	6243 3411
appointments for advice	6243 3471
legal advice line (weekdays 9am to 4pm)	1300 654 314
Registrar General's Office	6207 6444

About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face-to-face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney-General's Department.