

Paternity tests to prove parentage in family law matters

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The best way to confirm whether somebody is the father of a child is through a DNA paternity test. It is not uncommon for family law proceedings to hear disputes where there is uncertainty or disagreement about paternity. Here's what you need to know about paternity tests to prove parentage in the Australian family law context.

A DNA paternity test can be performed where there is a dispute about who the child's parents are. Most commonly, disputes can arise about who the father is in the context of child support.

Presumption of parentage

Presumption of parentage is when a court or other agency accepts or 'presumes', in accordance with legislation, that a person is a parent of a child without the requirement for DNA testing.

For example, the Child Support (Assessment) Act 1989 states that proof that a person is a parent of a child includes if the child was born during the course of a marriage or if the person is recorded on the birth certificate of the child. However, the presumption of parentage doesn't prevent a party from seeking testing if there is still some doubt in their mind.

Notably, a dispute about paternity doesn't automatically give rise to the need for DNA paternity testing. This type of testing is generally only needed in the context of child support or if a parent raises the issue in a parenting matter.

Paternity testing in Australia

Determining parentage can be complex. Testing for legal purposes must be done by laboratories accredited as required by the Family Law Act (the Act) and using strict procedures that are set out in the regulations. These include that:

a DNA sample must be taken by an approved sample collector in an approved process; and

the test is conducted in a NATA-accredited laboratory.

To obtain a court-ordered paternity test, you must apply to the Family and Federal Circuit Court of Australia or the Family Court of Western Australia (for those living in Western Australia) (the Family Court) and present reasons which are relevant as to why the order is sought. This reason could be to determine a dispute over child support, time spent with a child or children, or inheritance (for non-family law matters).

It is not only the alleged father who may seek a paternity test. The following individuals or organisations can make an application for orders relating to paternity testing.

Alleged father;

Mother;

Legal guardian;

Child (represented by legal counsel or as an adult);

Government agencies;

Legal representatives;

Courts.

Can I refuse a court-ordered paternity test?

If a party refuses to attend DNA testing, then inferences may be drawn from that party's behaviour of refusing to participate in the testing. The Family Court may make negative or adverse assumptions based on the refusal and act accordingly.

For example, if an alleged father refuses the test, the court may assume he is the child's father and order him to pay child support to the mother. As well as that, a refusal can result in court penalties or sanctions because they have not complied with an order of

the court.

Paternity tests for child support assessment

Child support is payments made by one or both parents to the other after separation to assist with looking after any children of the relationship. You can learn more about the requirements for child support by reading our blog, ”How is child support determined in Australia?”

Questions surrounding paternity are commonly raised in disputes over child support. This can come from either:

- a person seeking to claim child support from another party (requiring confirmation of parentage to do so); or
- a party claiming that they don’t believe they’re the parent and they should not be obligated to pay child support.

Services Australia, which is responsible for enforcing child support obligations in either circumstance above, would not be able to seek child support from an unwilling parent who isn’t listed on the birth certificate.

If Services Australia is unable to proceed with an assessment on the basis of paternity, then a parent must apply to the Family Court for a court-ordered DNA paternity test of the other parent. If this proves their paternity, the Court may then make orders allowing them to have Services Australia assess the other parent’s liability to pay child support.

If a person is found to not be the parent of a child and they have been paying child support, they will most likely not be required to pay any in the future. It can be very difficult to get an order for any past payments of child support to be refunded. We recommend that if you have any doubts about paternity, you seek legal advice from an experienced family lawyer at an early stage.

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Paternity tests in parenting matters about spending time with children

It is also common to see an application for DNA paternity testing in family law proceedings where a party is seeking to spend time with a child.

For example, a mother may attempt to prevent the father from spending time with the child as she does not accept him as the biological father. In this scenario, the father could seek a court-ordered paternity test to prove parentage.

You can learn more about the legislative framework for parenting orders by reading our blog, ”Parenting orders for spending time with the children”.

You should also keep in mind that paternity testing may ultimately not be required. In some circumstances, like child support

disputes, the Family Court has the power to make relevant orders even if the other parent isn't on the birth certificate or doesn't believe they are the parent.

Further, there is no section of the Act which requires a significant person in a child's life to necessarily be a biological parent. If a child has a relationship with a person, and for the child it is in their best interests to continue this relationship, the Court does not mandate such person be a biological parent.

Get help from a family lawyer

Disputes about parentage and paternity testing can be very complex, and there are a number of scenarios and questions that we have not discussed in this blog due to the complicated nature of this area of family law. If you have concerns about parentage and your obligations or rights around DNA paternity testing, you should speak with one of our highly skilled family law team members.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.