

Separating When Pregnant

This information is based on the law as at October 2013. It is written for the use and benefit of women in the Australian Capital Territory and Region. The information is a general guide to the law and should not be relied upon as a substitute for legal advice.

This fact 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 fact sheets on Parenting Orders and Child Support.

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 the 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?

If your baby is born in the ACT, you have to register your baby's birth by lodging a Birth Registration Statement at the Office of Regulatory Services (ORS) within 60 days of the birth. The Statement is usually provided by your hospital or it can be accessed at the ORS website at www.ors.act.gov.au. *The information supplied in the Statement will be used for your baby's birth certificate.* You can order the birth certificate when you submit the Statement or you can wait until later.

You can choose whether or not to put the father's name on the Birth Registration Statement, and consequently, the birth certificate. If you choose not to register the father's name, he may bring an application in the Court (usually the Federal Circuit Court of Australia) 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 for parenting orders in relation to your baby (see below).

Can the baby have my surname ?

You need to think carefully about the baby's surname. You can put your surname down as your baby's surname on the Birth Registration Statement. Just because your baby's father is named on the Statement 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 and what surname is in your child's best interests.

Even if the father's surname is the one registered and used on the birth certificate, you can use your surname for your 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?

If you have named the father in the Birth Registration Statement but he has not signed the form, then he will not be registered as the father or put on the birth certificate as the father.

You can apply to the Court for a declaration of paternity. The Court will draw certain presumptions about paternity if you and the 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. You will have to attend family dispute resolution and file a certificate about that, unless you are exempt. See the Centre's fact sheet *How Do I apply to the Federal Circuit 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 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.

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 to short visits of 1-2 hours, a few times per week. If the visits have gone well for the baby, the time will increase as the baby gets older. Sometimes the visits are supervised. If appropriate, you could supervise the visits yourself. If 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 the 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 an Australian passport for my baby?

If you want to travel overseas with your baby you will need to get him/her a passport. The law requires the written consent of each person who has parental responsibility for a child before a passport can be issued. If there are no court orders in place, the law assumes that you have shared parental responsibility, even if the father is not seeing the child.

If the father refuses to provide consent and sign the application form you may make a written request to the Department of Foreign Affairs & Trade that the application be considered under 'special circumstances'. You will need to provide the child's birth certificate and originals of all court orders affecting parental responsibility. Call the Australian Passport Information Service on 13 12 32 or see www.passports.gov.au for further information. If your request for consideration of 'special circumstances' is not successful, you can apply to the Court for an order permitting your child to travel internationally.

Even if you already have a passport for your baby, every time you wish to take your child overseas you must obtain the father's consent. If there is a parenting order in

place, then you could breach that order by leaving the country. Even if the parenting orders are silent on the issue of overseas travel, you need the father's consent and/or a court order. You also run the risk of the father seeking orders for the Australian Federal Police to place the child's name on the Airport Watch List. 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 fact sheet *How do I apply to the Federal Circuit 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 previous involvement with the Office for Children, Youth and Family Support (also known as '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 Circuit Court for a parenting order.

What child support will I get from the father?

Once your baby is born, you can apply to the Department of Human Services (the Department), previously the Child Support Agency, for ongoing child support or make a child support agreement with the father. The Department calculates child support on a formula taking into account the taxable income of both parents, the costs of raising children and the percentage of care each parent provides. 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 Department's assessment unless you obtain an exemption. See the Centre's fact sheet on Child Support and the 'Parent's Guide to Child Support' booklet at www.humanservices.gov.au.

The Department will be satisfied the father is the legal parent in certain situations – if, for example, you were married when the child was born, the parent is named on the birth certificate, the father was living with the mother between 20 and 44 weeks prior to the birth or there is a statutory declaration made by the father acknowledging paternity. If the Department is not satisfied the father is the legal parent, or if the father believes he is not the parent, a declaration of parentage may be applied for in Court and the Court may order DNA testing.

As well as applying for child support, if you are not married to the father, you can also make an application to the Court for the father to make a contribution towards:

- Your maintenance for the period of two months before your baby is due to be born (or earlier if you have to give up work upon medical advice) and 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; and
- Reasonable medical expenses in relation to your pregnancy and birth.

How much the father has to pay depends upon the income and capacity to pay for both yourself and the father.

You must bring this application during pregnancy or within 12 months of your baby's birth.

Where do I go for information and advice?

Office of Regulatory Services	6207 3000 www.ors.act.gov.au
Department of Human Services	
Child Support queries:	131 272
Automated Child Support information service:	131 107
	www.humanservices.gov.au (see 'Separated Parents' tag and 'Child Support Online Services')
CSAonline	www.csaonline.gov.au
A secure internet service to conduct child support business on-line	
Care and Protection Services within the Office for Children, Youth and Family Support	1300 556 729
Family Law Courts National Enquiry Centre	1300 352 000 www.familylawcourts.gov.au

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 Social Inclusion Division of Civil Justice and Legal Services Groups, Commonwealth Attorney-General's Department.