

Paternity



WHAT IS PATERNITY?

Paternity is the legal word for **fatherhood**.

Establishing the paternity of a child, or who the legal father is, is very important, especially when, for example, –

- a man wants to prove that he is, or is not, the father of a particular child
- a father applies to the Family Court so that he can have day-to-day care of, or contact with, a child
- a mother applies for the Domestic Purposes Benefit to help support her and her child
- a child claims the right to inherit property from someone the child believes is their father.

ESTABLISHING PATERNITY

There are a number of ways the paternity of a child can be established –

- a husband is presumed to be the father of any child born to his wife while they were married or within 10 months after they were divorced (but this can be disputed in Court)
- the man named as a child's father on the birth certificate is presumed to be the child's father (but again, this can be disputed in Court)
- the father can state that he is the child's father by signing an **acknowledgement of paternity**, which has to be co-signed by the child's mother
- a Court can declare that a man is a child's father. It also can declare that a man is not a child's father.

These different ways are explained in more detail on the next pages.



HUSBAND IS PRESUMED TO BE THE CHILD'S FATHER

The law presumes that a man is the father of a child if –

- he was married to the child's mother when the child was born, or
- the child was born within 10 months after his marriage to the child's mother was dissolved.

For example, if a separated father applies to the Family Court for an order giving him a role in looking after a child, the Court will accept he is the child's father if he provides it with a copy of the marriage certificate that proves either of the above.

The child's mother, however, is entitled to try to prove he is not the father if she wants to – through DNA tests, for example.



BIRTH CERTIFICATE IS EVIDENCE OF PATERNITY

If a child's parents weren't married, the child's birth certificate can be used to establish paternity. The man named as the child's father on the birth certificate is presumed to be the child's father. But this can be disputed in Court by someone else, or even by the child later in life, for example.

There are two ways by which a man can be named as a child's father on the birth certificate –

- by signing the child's birth registration form with the mother, which is then given to the Registrar of Births, Deaths and Marriages, or
- by signing a written notice asking to be recorded as the child's father, which the child's mother must also sign and give to the Registrar of Births, Deaths and Marriages.

ACKNOWLEDGEMENT OF PATERNITY

A man can state that he is the father of a child by signing a **Deed of Acknowledgement of Paternity**, which to have legal effect must be signed by the child's mother as well.

A **deed** is a special type of legal document that must be properly signed and witnessed. A family lawyer is able to prepare and witness a deed.

APPLYING TO A COURT TO ESTABLISH PATERNITY

If there is a dispute about the paternity of a child, the Family Court can be asked to resolve it. A child's mother may ask the Court to make a paternity order against a man who denies he is the child's father. A man may also ask the Court to declare that he is a child's father, or, if he believes there has been a mistake, to declare that he is not.

In certain cases other people can ask the Court to decide a question of paternity.

The High Court also has powers to decide questions of paternity and to declare that a man is or is not a child's father.

COURT CAN RECOMMEND TESTS TO ESTABLISH PATERNITY

When considering a dispute about paternity, the Court can recommend that tests be done to help it make a decision. These tests are called **parentage** tests, and might involve blood samples or mouth scrapings from both the child and the man.

The man can refuse to have the tests, but the Court can take his refusal into account when considering all the evidence.

Both the mother and the man have a right to ask the Court to recommend that these tests be done.

IS THE FATHER AUTOMATICALLY A GUARDIAN OF A CHILD?

Usually, a child's mother and father are joint guardians of the child. They are often referred to as the child's **natural guardians**.

However, while a child's **mother** is automatically a guardian, the child's **father** is a guardian only if –

- he was married to or in a civil union with the child's mother at any time from when the child was conceived until it was born, or
- the child was conceived **before** 1 July 2005 and he was living with the child's mother when the child was born, or
- the child was conceived **on or after** 1 July 2005 and he was living with the child's mother at any time between conception and the birth, or
- he was recorded as the father of the child on the birth certificate on or after 1 July 2005.

The father can also apply to be appointed a guardian by the Family Court. The Court will do this unless it is against the child's best interests.

For more information, see the pamphlet **Guardianship**.



CAN A MOTHER GET FINANCIAL SUPPORT FOR THE COSTS OF HER BABY'S BIRTH?

Yes. Within one year of a child's birth, the child's mother can apply to the Family Court for an order that the father contribute towards the costs related to the birth, and towards the mother's living expenses during the pregnancy and for one month after it.

APPLYING FOR THE DOMESTIC PURPOSES BENEFIT (DPB)

A parent caring for dependent children is entitled to receive the DPB from the Government if the parent –

- is 18 years old (or, if they are younger than 18, are or have been married), and
- is not living with the other parent.

Applications for the DPB must be made to Work and Income and must include –

- personal ID and proof of age
- the children's birth certificates
- bank account records.

DOES AN APPLICANT FOR THE DPB HAVE TO NAME THE OTHER PARENT?

Work and Income may require an applicant for the DPB to name the other parent of a child, because that other parent has an obligation to contribute to the cost of supporting the child (this is called paying **child support**). If an applicant for the DPB refuses to tell Work and Income who the other parent is, the amount of benefit paid can be reduced.

However, the benefit **won't** be reduced if Work and Income is satisfied that –

- there's not enough evidence to prove who the other parent is
- the child was conceived as a result of rape or incest
- the applicant is making serious attempts to try to identify the other parent
- the applicant or their child would be at risk of violence if they identified the other parent, or
- there are “compelling circumstances” that justify the applicant not identifying the other parent, and it's unlikely that child support could be collected even if they did identify them.

Work and Income may want signed statements and letters from lawyers to help prove any of these things.

For more information about the DPB, contact Work and Income or visit their website at www.workandincome.govt.nz.



APPLYING FOR CHILD SUPPORT

The parent who has day-to-day care of a child is entitled to get a contribution towards the cost of that care from the other parent. That contribution is known as **child support**. Applications for child support are made to the Child Support section of the Inland Revenue Department.

An application for child support must include proof that the other person is in fact a parent of the child. The proof can include –

- a copy of the child's birth certificate naming the other person as a parent
- a written acknowledgement by the other person that they are a parent of the child, or
- a declaration from a Court that the other person is a parent of the child.

How much the other parent has to pay towards child support depends on how much they earn and their personal situation. They pay child support directly to the Inland Revenue Department, not to the parent with day-to-day care.

For more information about child support, contact the Inland Revenue Department or visit their website at www.ird.govt.nz/childsupport.

APPLYING FOR CHILD SUPPORT WHILE ON THE DPB

Anyone applying for the DPB will automatically be required to apply for child support at the same time. Any child support owed to someone while they are receiving the DPB must be paid to the Government as a contribution towards the cost of the DPB. If the child support is more than the DPB, the difference will be paid directly to the person entitled to receive it.

NEED MORE INFORMATION OR ADVICE?

For more information or advice about paternity, look on the Family Court website (www.justice.govt.nz/family), or contact a family lawyer (www.familylaw.org.nz), a community law centre, or the nearest Family Court office.

LEGAL AID

Anyone who needs a lawyer but can't afford one may be able to get **legal aid**. This is where the Government pays some or all of the lawyer's bills (sometimes you may have to pay some or all of it back).

You can get information on legal aid by –

- contacting the local Legal Services Agency office (see the blue Government pages at the front of the phonebook)
- visiting the Legal Services Agency website at www.lsa.govt.nz, or
- seeing a lawyer and discussing legal aid with them.

Legal aid is available for all Family Court cases, except dissolution of marriage (divorce).





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www.justice.govt.nz/family