



CHILD BIRTH EXPENSES

MAKING AN APPLICATION TO COURT FOR CHILDBIRTH EXPENSES

A self help kit for mothers

March 2010

Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is complex and constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

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This kit provides general information about how to apply for childbirth expenses through the Magistrates Court. It does NOT provide information about how to apply for child support through the Child Support Agency or how to claim maternity allowance or the childbirth bonus from Centrelink.

Caxton Legal Centre Inc. has several kits to assist you if you are seeking to obtain maintenance for your children. You can contact Caxton Legal Centre for further information about its maintenance kits and programs.

If you are also seeking to establish who the biological father is for your child/ren, please contact Caxton Legal Centre for further information and assistance.

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Terms to know

Adjournment: an application to postpone a court date. The respondent and applicant must attend court and ask the magistrate or judge for an adjournment.

Affidavit: a written document which sets out in numbered paragraphs the facts relating to a case. The affidavit must be signed by the person who has written it in front of a qualified witness such as a lawyer or Justice of the Peace.

Childbirth period / childbirth maintenance period: two months before the expected date of birth and three months after the actual date of birth.

Consent orders: an order made by the court, which can relate to childbirth expenses, where both parties are in agreement about the terms of order.

Initiating application: written application to begin proceedings in court.

Minutes of consent: a draft agreement signed by both parents which becomes consent orders once approved by the court.

Private agreement: an agreement about payment for childbirth expenses made between the mother and father which is not enforceable by the court.

Reasonable expenses: costs associated with childbirth that are reasonable given the mother and child's situation.

Part 1: Childbirth expenses explained

Having a child can be expensive. Apart from the costs of actually raising the child and providing him/her with housing, food, clothing and so on, there are significant expenses relating to the actual birth of the child. *The Family Law Act 1975* recognises that each parent should contribute not only to the ongoing costs of raising a child but also to the costs associated with giving birth.

A woman's capacity to financially support herself and prepare for the child's birth may limit her ability to work in the later stages of her pregnancy and the earlier stages of the child's life.

If the father of your child did not support you, as the mother, financially during or after your pregnancy, it may be possible for you to ask the Magistrates Court for an order that the father makes a contribution towards the costs of childbirth. There are several important exceptions:

- If you are married to the father of your child you cannot claim childbirth expenses. *The Family Law Act 1975* allows only unmarried mothers to claim these types of expenses. This is because it is presumed that married women will be supported and provided for by their husbands during childbirth.
- The application for childbirth expenses must be made to your local Magistrates Court or to the Federal Magistrates Court within twelve (12) months of the date of your child's birth.
- Childbirth expenses applications can only be made by the mother. Fathers are not able to claim expenses relating to the birth of their child.
- At this stage the Family Law Act refers to the mother and father of the child and does not make provision for claims from parents in a same sex relationship.
- The Magistrates Court cannot make an order that the father contribute to the childbirth expenses unless you can provide some proof that he is actually the father. If the father has signed the birth certificate, this is sufficient. Alternatively, if the father did not sign the birth certificate but has since signed a declaration acknowledging that he is the father, the court will accept this.

- If the father has not acknowledged paternity by signing the birth certificate or a statutory declaration, you will need to establish paternity through another means before you can claim childbirth expenses. If the father has not acknowledged paternity of your child, please contact either Legal Aid Queensland or Caxton Legal Centre for information and/or assistance on how you can establish who the father is.

What are childbirth expenses?

Childbirth expenses are any reasonable costs actually incurred by you as a result of your pregnancy. They are costs incurred during a five-month period as defined in the *Family Law Act 1975* as the childbirth maintenance period. This five-month period is calculated from two months before the baby's birth to three months after the baby's birth. This period can be extended if a mother was forced to give up work during her pregnancy on the basis of medical advice. So, for example, if a woman had to give up work three months into her pregnancy for medical reasons, the childbirth maintenance period could be a total of nine months (i.e. six months before and three months after the birth). Proof of the relevant facts would need to be given to the court. For example, the doctor who provided instructions to the mother to give up work for medical reasons should be asked to prepare a sworn statement to this effect, which should be filed with the court.

Childbirth maintenance costs may include:

- your reasonable medical expenses relating to the pregnancy and the birth;
- an amount of money necessary to maintain yourself during the childbirth period;

and

- if the child dies during childbirth, the reasonable funeral costs.

The definition of childbirth expenses is also broad enough to include the purchase of items and services that are necessary to care for the child. These may include:

- basic items of baby clothing;
- nappies;
- items of furniture (eg. cot, basinet, change table);
- baby capsule or car seat;
- baby formula.

This is not a complete list of the types of items for which expenses may be claimed, but it should provide you with some guidance. It is important to remember that you can only claim reasonable expenses.

What is reasonable will depend upon your individual circumstances. For example, it might be considered unreasonable to claim \$50.00 for a fashionable baby's jumpsuit when a plain jumpsuit costs \$15.00, or \$3500 for an antique cot when cots are commonly available for less than \$1000. If you intend making a claim for these types of expenses you should ask yourself the following questions:

- Was the item/service necessary because I was pregnant?
- If I were in the same financial position I was in before I was pregnant (e.g. working or unemployed) would I have been able to pay for this item/service?
- Was this item/service the best value for money at the time I bought it?

If you answered "yes" to all three questions, it is likely that a court would consider your claim to be a reasonable one. On the other hand, if you answered "no" to any of these questions the court may consider whether your expenses were extravagant or unreasonable.

All expenses under this category must have arisen during the childbirth period (i.e. two months before the expected date of birth and three months after the actual date of birth). So, if you have bought a cot when you are four months pregnant, you would not be able to claim the cost of it because it is outside the childbirth period.

Funeral expenses

You are entitled to make a claim for funeral expenses where your child is stillborn or dies as a result of the birth process.

Part 2: Calculating your childbirth expenses

If you have kept receipts of your purchases during pregnancy and childbirth, you can use these to calculate your claim. If you have not kept receipts you will need to estimate the current reasonable price for similar items. It is better to underestimate your expenses rather than to overestimate. You will need some proof of your estimates. Shop catalogues or quotes are useful proof.

Childbirth costs may vary significantly depending on your circumstances. For example, a second hand cot may reduce your cot/bedding costs, and your baby clothing costs may also reduce if you are given numerous items of baby clothing as gifts by family/friends.

The following guide might assist you in calculating your claim and the information in it should be included in you affidavit either in the body or as an attachment.

Childbirth Expenses Calculations Sample Document

(1)	<u>Medical costs</u>		
(a)	Doctor/Specialist appointments		
	Name of doctor	Type of treatment	What I paid
	Dr XX	Consultation	\$ 300
	Ms XX	Ultrasound	\$ 200
(b)	Hospital costs		\$ 3000
	Date of admission	Date of discharge	
	TOTAL MEDICAL EXPENSES I PAID		\$ 3500
(2)	<u>Outlays for birth/pregnancy</u>		What I paid
	Maternity clothes	3 x dresses	\$ 150
		2 x pants/trousers	\$ 150
		3 x night gowns	\$ 60
		3 x shirts	\$ 100
	Nursing bras and pads		\$ 350
	Nappies		\$ 200
	Bouncer		\$ 100
	Pram		\$ 500
	Bottles and steriliser		\$ 200
	Formula		\$ 100
	Baby clothes		\$ 200
	Baby cot and bedding		\$ 500
	High chair		\$ 250
	Baby capsule		\$ 200
	Change table		\$ 250
	Baby bath		\$ 50
	TOTAL OUTLAYS FOR BIRTH /PREGNANCY		\$ 3350
(3)	My living costs		
	Date child birth period started		
	Number of weeks in my child birth period	20 Weeks	
	Weekly rent expenses during childbirth period		\$140
	x weeks in child birth period		<u>x 20</u>
		Total rent	\$ 2800
	Weekly food expenses during child birth period		\$70
	x weeks in child birth period		<u>x 20</u>
		Total food	\$ 1400
	Weekly telephone bill on where I was living during child birth period		\$7
	x weeks in child birth period		<u>x 20</u>
		Total telephone	\$ 140
	Weekly electricity on where I was living during child birth period		\$9
	x weeks in child birth period		<u>x 20</u>
		Total electricity	\$ 180
	My average weekly during child birth period		
	x weeks in child birth period		<u>x 20</u>
	TOTAL LIVING COSTS DURING CHILD BIRTH PERIOD		\$ 4520
ADD	TOTAL MEDICAL EXPENSES		\$ 5000
	TOTAL OUTLAYS FOR PREGNANCY AND CHILD BIRTH		\$ 3350
	TOTAL LIVING COSTS DURING CHILD BIRTH PERIOD		\$ 4520
	TOTAL CHILD BIRTH EXPENSES CLAIM		\$ 11370

Part 3: What is a reasonable amount in childbirth expenses to claim?

The *Family Law Act 1975* says that the other parent is required to contribute a proper amount to childbirth expenses. What is a proper amount depends upon the individual circumstances of each case.

The court will consider the following matters to determine what contribution the other parent should make to the payment of your reasonable and necessary expenses:

- The income, earning capacity, financial resources and property owned by both you and the other parent;
- The commitments necessary to support yourself;
- The commitments necessary for the other parent to support him/herself and anyone else he/she is required by law to support (e.g. a new partner, other natural children, adopted children);
- Any special circumstances that the court considers to be relevant to avoid injustice or undue hardship to either you or the other parent.

So, for example, where the other parent is receiving a very good wage, owns property and is not required to support anyone else, the court might order that he pay all or most of your claim.

On the other hand, if the other parent receives an average wage, is supporting another child and has no significant savings in the bank, the court may order him/her to pay only half or even less.

Generally, the court will not order the other parent to pay more of the claim than he/she could reasonably afford. It would be pointless for example, to order a person to pay the full amount of your claim if they simply can't afford to make any payments. It is much better to have an order for half of your claim that the person can (and will) pay. You should be prepared to accept less than your full claim if the other parent can show that he cannot pay that amount.

It is important to understand that the court looks at income, resources and commitments as at the date that matter is heard by the court. So, if the other parent was unemployed while you were pregnant but has since found work, the court will look at his/her current income.

Finally, when looking at the financial circumstances of yourself and the father, the court must not consider any pension or Social Security benefit received by either of you. If you are receiving a sole parent's benefit, the court must disregard the amount of your pension. It is as if you have no income at all.

Likewise, if the other parent is receiving unemployment benefits, the amount of that benefit must also be disregarded. If the other parent is unemployed, has no real job prospects and no significant assets, it is unlikely that the court will rule that he/she pay expenses that they do not have enough money for.

Part 4: Initial steps in making a claim and negotiating with the other parent

Once you have calculated the amount of your childbirth expenses claim, it is usual to contact the other parent to ask whether he is prepared to make a payment to you to cover these expenses.

If you are on speaking terms with the other parent you may like to discuss your claim with him personally. Be prepared to support your claim if necessary. Produce any copies of receipts for amounts you have spent. If you do not have receipts for some items, you could use shopping brochures and catalogues as a guide to show the other parent the average price of things you have purchased.

If you do not want to speak to the other parent directly, you could send him a letter outlining your claim. A sample letter is set out below. You may like to adapt it to suit your particular case.

*Miss Tara Tea Fontana
44 Ambrosia Street
BRISBANE QLD 4000*

10 January 2010

*To: Joseph Joe Bloggs
10 Tree Street
BLOGGSTOWN QLD 4008*

Dear Joseph

I am writing to you to ask you to assist me with the expenses I incurred when Mary May was born. As you know, my inability to work during the last eight weeks of my pregnancy and the cost of preparing for Mary May's birth have really put a strain on my finances. I understand that under the Family Law Act 1975 I am entitled to seek some money from you for any childbirth expenses I incurred.

I have done some calculations, which show that I spent at least \$11,370.00 in preparing for the birth. This amount includes medical expenses of \$3500.00 and maternity clothes, baby clothes and baby

items of \$3350.00. I also spent approximately \$4520.00 on living expenses (rent, food, electricity) during the eight weeks before Mary May was born and the three months after her birth as the bills still had to be paid even though I was unable to work!

I have enclosed a detailed breakdown of all these expenses, with copies of receipts for my medical expenses, Mary May's cot, bouncer, pram, high chair and car seat. Receipts are also enclosed for my rent, telephone, electricity and gas bills. Unfortunately, I did not keep receipts for other items but I have enclosed some shopping catalogues that will give you an idea of the average cost of the other items I had to purchase.

I appreciate that \$11,370.00 is a lot of money. However, to date I have paid for these expenses without any assistance from you. This has severely reduced my savings and my ability to provide additional items for Mary May's care.

Joseph, I ask you to consider whether you would be prepared to reimburse me for some of these expenses. Ideally, I think you should pay for say, two thirds of the total amount (\$7,580.00) given that you have been in paid employment throughout my pregnancy and since Mary May's birth. Of course, I am prepared to negotiate with you about the exact amount and times for payment depending upon your current financial circumstances.

Please let me know within fourteen (14) days about your intentions. I would much prefer to sort this matter out with you rather than going through time-consuming and expensive legal action. I hope that you feel the same way.

Yours sincerely
Tara Fontana

Make sure you keep a copy of the letter. If the other parent is not prepared to negotiate with you or if he does not respond, you can use the letter later to show the court that you have tried to sort out the claim before going to court.

Remember that you should be prepared to negotiate with the other parent about how much he will pay towards the claim. You should also be prepared to accept regular payments towards the amount if he cannot make a lump sum payment.

If the other parent is prepared to negotiate, ask him to provide proof of his income and expenses. You could also ask him to provide details of any savings he might have or of any money owed to him.

If you can agree, you can choose to have either a verbal or written private agreement or a court consent order.

Private agreements between you and the other parent cannot be enforced by the court (i.e. the court cannot force either of you to obey the agreement). This means that if the other parent does not pay you the amount agreed or if he stops making regular payments, you cannot ask the court to force the other parent to meet his end of the agreement. Private agreements are only recommended where the other parent makes full payment of the agreed amount at the time the agreement is reached or where you are very confident that the other parent will comply with the arrangement. Bear in mind that court action must be started within 12 months of the baby's birth.

Alternatively, you can finalise your agreement by seeking consent orders from the court. This procedure is quick and simple – you do not need a solicitor to obtain consent orders. A consent order is an order made by the court – it has the same effect as a court order made after a hearing of your claim. The difference is that as both of you are agreeing to the order, the court does not need to hear all the evidence.

The Family Court of Australia has a Consent Orders kit available to assist you in preparing an application for approval of consent orders. The kit can be obtained from the court (or downloaded from its website) once you have reached an agreement about childbirth expenses. You can also obtain a copy of this kit from Caxton Legal Centre.

SECTION 2: PREPARING FOR COURT

Part 1: What documents will I need?

The documents that you will need are set out in more detail below:

- An Initiating Application
- Affidavit
- A Financial Statement
- Copy of your child's birth certificate

You can get copies of these forms from your local Magistrates Court, the Federal Magistrates Court registry or from its website.

Part 2: Preparing an Initiating Application

Do I need to type the application?

It is better to type this form but you can neatly handwrite it in blue or black pen.

How do I know what to write in the application?

See the example document attached to this application. This is a guide only, and you should get legal advice regarding your matter.

Who are the Applicant and the Respondent?

You are the Applicant.

The Respondent to your application will be the other parent.

Part 3: Preparing your Affidavit

What does this document do?

This form tells the court why you want to make a claim for childbirth expenses. It contains your evidence. You are required to attach certain documents to your Affidavit.

Do I need to type the Affidavit?

Yes. This form must be typed.

How do I know what to write in the Affidavit?

The following points should be considered when writing your Affidavit:

- Explain your own circumstances and reasons why you are making this application.
- Use short, clear sentences in numbered paragraphs.
- Put only one idea in each paragraph.
- Put relevant ideas in chronological order.

Use the attached example document as a guide.

What do I need to attach to the Affidavit?

You will need to attach photocopies of receipts at least for major items of expenses that you have paid for. If you do not have a copy of the receipt for a major item of expenditure, you should explain why you do not have a copy of the receipt.

Part 4: Preparing the Financial Statement

What does this form do?

This form gives the court details about your financial circumstances. In deciding your application, the court needs to know the financial circumstances of both of the parents of the child to enable it to make an order that is fair between the parties.

Do I need to type the financial statement?

It is better to type this form, or you can neatly handwrite it in blue or black pen.

How do I know what to write in the financial statement?

This form is very detailed. You must make sure you answer every question carefully. The Family Court has a guide *Financial Statement (do it yourself kit)*, which you should read before you fill in the Financial Statement. You can obtain a copy of this guide from Caxton Legal Centre, the Family Court or the Family Court website (see above for the address).

IMPORTANT NOTES ABOUT THE FINANCIAL STATEMENT

- Be as accurate as possible.
- Your income and expenses need to be worked out as weekly amounts. For some expenses it is easiest to work out how much you spend over the year and divide that by 52 weeks in the year.
- Complete the 'Financial Summary' on page 2 after you have completed the rest of the form.
- If your expenses are more than your income, you will need to explain in your Affidavit how you meet those expenses (for example by credit card) or whether you are not meeting those expenses.

What other documents do I need?

If you make your application to the Federal Magistrates Court you will have to bring to the court copies of the following documents:

- A copy of your taxation return for the last three financial years;
- Your taxation assessment for the last three financial years;
- Your bank records for the period three years up to when you filed your application;
- Your four most recent pay slips if you receive wages or salary payments;

- Your business activity statements for the previous three financial years if you own or control a business;
- Any other document relevant to determining your income, financial needs and financial resources.

Make sure you have these documents available.

Part 5: Obtaining your child's birth certificate

You will need an original, a certified copy or a good quality photocopy of your child's birth certificate. You can get a copy of the birth certificate from the Registrar of Births, Deaths and Marriages. See below for contact information.

Part 6: Preparing all the forms for court

Should I have a solicitor check the forms once I have completed them?

Yes. A solicitor from Caxton Legal Centre, Legal Aid Queensland or any other Community Legal Centre can check the forms once you have completed them.

Sign your forms in front of a Justice of the Peace..

How many copies of the forms do I need?

You will need to file the originals plus two copies of the following documents:

- Initiating Application
- Affidavit
- Financial Statement

You only need to file one copy of the birth certificate.

Do I need a cover-sheet for my documents?

An example cover-sheet is included in this kit. You will need a cover sheet for the birth certificate. The Affidavit, Initiating Application and Financial Statement do not require a cover-sheet.

Part 5: Which court should I use?

Use either the local Magistrates Court or the Federal Magistrates Court.

If you are living in the Greater Brisbane area, you should file your application in the Federal Magistrates Court. The forms you should be

using are set out in this kit and they are also available for download from the Federal Magistrates Court website at www.fmc.gov.au. These forms are also acceptable for use in your local Magistrates Court.

The Federal Magistrates Court visits selected regional centres outside of the Greater Brisbane Area. Please check with the court whether it has a circuit to your area.

Contact details for Brisbane Courts are at the end of this kit, and regional court contact information is in the white pages or online at www.courts.qld.gov.au.

Part 7: Filing the court forms

How do I file the court forms?

Follow the steps below:

- Hand all of your court forms to the counter clerk at the filing registry of the court.
- The clerk will stamp the forms with a court stamp and number them.
- The clerk will write a time and date when you must attend court in the top right hand corner of the forms.
- Make sure you can attend court on that day. If not, ask the clerk for another date.
- The clerk will hand you back two copies of each form.
- One copy is for you to keep.
- The other copy is for the Respondent.

Filing Fee

A filing fee is payable. However, some Applicants are exempt, depending on their financial circumstances (this may apply to you if you are in receipt of some form of Centrelink payment or are a concession card holder) or the fee may be waived (if it is going to cause you financial hardship). An exemption of fee form or a waiver of fee form can be obtained from the court or can be downloaded either from the Federal Magistrates Court website (see above).

Part 8: Serving the Respondent with a copy of the court forms

Before the court date, you will need to serve one copy of each court form on the Respondent.

The Family Court of Australia has a kit on service of documents that will assist you. The kit is available from Caxton Legal Centre or Legal Aid Queensland or you can download it from the internet.

Part 9: Preparing and filing an Affidavit of Service

Before the court date you or the person who served the court forms will need to prepare and file a Form 7 Affidavit of Service that sets out how you have served the Respondent.

Information on how to complete the Affidavit of Service is contained in the abovementioned kit on service of documents.

Part 10: Organising legal representation

If you are worried about speaking for yourself in court, a solicitor can do this for you.

If you can afford to pay a private solicitor, Caxton Legal Centre can refer you to someone. Caxton Legal Centre cannot represent you in court.

You may qualify for Legal Aid. Contact Legal Aid Queensland on 1300 651 188.

Part 11: Response from the other parent

The other parent can:

- agree to your application; or
- ignore your application; or
- oppose your application.

If the other parent agrees with your application, you still need to go to court and have the court approve this agreement. You and the other parent could sign Minutes of Consent that formalise your agreement. See a solicitor for advice about this.

If the other parent ignores your application, you still need to go to court and ask the court to make the orders for which you have applied in the absence of the other parent. This is called 'making orders by default'.

If the other parent opposes your application, he may file documents in court. Read the documents carefully and write down any questions you have about the information in the forms.

At any time before your court hearing you can try to reach an agreement with the other parent. However, you still need to go to court and have the court approve this agreement. You and the other

parent can sign Minutes of Consent that formalise your agreement. See a solicitor for advice about this.

Part 12: Preparing for the Hearing

Get together all the documents you might need for the Hearing, for example:

- copies of court documents you have filed for the case;
- the documents mentioned above;
- copies of receipts for the expenses you have claimed;
- your list of questions to ask the other parent in court, particularly about his income and assets.

SECTION 3: GOING TO COURT

Do I have to go to court?

Yes. You must go to court on the date written on the top right hand corner of the court forms. You may be able to attend by telephone on some occasions. You would need to request in writing to attend by electronic communication, however, you would need to make that request at least 7 days beforehand and set out the reasons why you can not attend in person. Generally, if you live a substantial distance from the court, you will be allowed to attend this way.

What happens if I do not go to court?

If you do not go to court, the court might dismiss your application, unless you have made appropriate arrangements.

What happens on the court date?

What happens on the first court date will depend upon the court in which you have filed your documents. You should clarify this at the time you file your documents.

Caxton Legal Centre runs a duty lawyer service for matters in the Federal Magistrates and Family Courts based in the Commonwealth Law Courts in Brisbane. This service can only assist on the day of your appearance in court. Please note that there is also a duty lawyer service run by Legal Aid Queensland but if you are already a Caxton client it is preferable that you use Caxton's duty lawyer service.

On some occasions a matter cannot proceed on the first court date and directions have to be made about the filing of further material and the matter set for trial.

You should arrive at court at least 15 minutes before the 'Hearing time' written on your court forms. This will give you time to find your courtroom.

There will usually be a court clerk sitting in the courtroom or just outside the courtroom.

Tell the clerk your name and that you are appearing for yourself in a case.

The clerk will tell you where to wait until your case is called.

What happens when my case is called?

You should tell the Magistrate your name and that you are appearing for yourself in this case.

What do I call the Magistrate?

Magistrates in State and Federal Courts are usually called 'Your Honour'. Stand up when talking to the Magistrate.

What if the Respondent is not there?

If the Respondent is not there, the Magistrate could:

- Listen to your story and make a decision about whether to make the orders.

Or

- Postpone or 'adjourn' your case for a week or two. The Magistrate may tell you to contact the Respondent and tell him that the case will be heard on a new date and give him one last chance to come to court.

How do I tell my story?

You should tell the Magistrate in a few words what your case is about and refer him/her to the details in your court forms.

You may be asked to give evidence from the witness box, and the other parent or his solicitor may ask you questions.

What happens then?

The Magistrate will ask the Respondent or his solicitor if they have any objection to your application.

Caxton Legal Centre

28 Heal Street
New Farm 4005
Tel: 3254 1811
www.caxton.org.au

Community Legal Centres offer free legal services and are located all over Australia. To find a Community Legal Centre in Queensland contact the Queensland Associations of Independent Legal Services via their website www.qails.org.au.

SECTION 5: EXAMPLE DOCUMENTS

The following Example Forms are attached below

1. Initiating Application
2. Cover Sheet
3. Example Affidavit
4. Blank copy of Childbirth Expenses Calculations

You will also need to submit a Financial Statement to the court. The Financial Statement is not available with this kit but can be obtained from your local Magistrates Court or from the Federal Magistrates Court. Alternatively, you can download the forms from the Federal Magistrates Court's web site or ring the court to have a set sent to you.

INITIATING APPLICATION (Family Law)

Filed in:

- Family Court of Australia
- Family Court of Western Australia
- Federal Magistrates Court of Australia
- Other (specify): _____

IMPORTANT: Information for respondents to the application is on page 10.

COURT USE ONLY
Client ID
File Number
Filed at
Filed on
Court location
Court date
Time
Type of hearing

TARA TAE FONTANA
Applicant's Name
[Mother]

JOSEPH JO FONTANA
Respondent's Name
[Father]

Part A: The orders sought

Type of orders sought (mark all boxes that apply)

- Children (parenting) Financial (property and/or maintenance)
- Child support Other (specify): Childbirth Expenses
- Declaration

Filed on behalf of: The Applicant
Prepared by The Applicant Lawyer's Code _____
Name of law firm _____
Address for service in Australia 44 Ambrosia Street
Brisbane State Qld Postcode 4000
Email* _____ DX _____
Tel 07 12345678 Fax* _____ Attention _____

* Please do not include email or fax details unless you are willing to receive documents from the Court and other parties in that way.

Final orders sought (state precisely and briefly the final orders sought by the applicant – give a number to each order sought)

1. That pursuant to section 67B of the Family Law Act 1975 the Respondent pay to the Applicant the amount of \$XXX by way of a lump sum for the Applicant's maintenance and her reasonable childbirth expenses in relation to her pregnancy and birth of the child XXX born XXX.
2. Such other order as the court deems meet.

Interim or procedural orders sought (These orders can only be sought in this form if you are seeking final orders as well; otherwise, leave blank. State precisely and briefly the orders sought – give a number to each order sought.)

- 1.

Part B: Details of the Parties

Details of Applicant/s

	Applicant 1	Applicant 2
Family name as used now		
Given names		
Sex	<input type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Residential address (incl postcode)		
Telephone number (home and mobile)		
Date of birth (day / month / year)	/ /	/ /
Usual occupation		
Mark box as applicable for each applicant	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia
Description	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):
Is an interpreter required?	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:
*Is the applicant of Aboriginal and/or of Torres Strait Islander origin?	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander

*You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

Details of Respondent/s

	Respondent 1	Respondent 2
Family name as used now		
Given names		
Sex	<input type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Residential address (incl postcode)		
Date of birth (day / month / year)	/ /	/ /
Usual occupation		
Mark box as applicable for each respondent	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia
Description	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):
Is an interpreter required?	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:
*Is the respondent of Aboriginal and/or of Torres Strait Islander origin?	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander

* You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

Part C: Relationship of Parties

Date parties commenced to live together (day / month / year)	/ /	or <input type="checkbox"/> Not applicable
Date of marriage (day / month / year)	/ /	or <input type="checkbox"/> Not applicable
Place of marriage (town, city, country)		or <input type="checkbox"/> Not applicable
Date of final separation (day / month / year)	/ /	or <input type="checkbox"/> Not applicable
Date of divorce (day / month / year)	/ /	or <input type="checkbox"/> Not applicable

Part D: Children

(Complete details for each child. If more space is required for extra children, attach an extra page)

	Child 1	Child 2
Family name		
Given names		
Date of birth (day / month / year)	/ /	/ /
Sex	<input type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Mother's family name		
Mother's given names		
Father's family name		
Father's given names		
With whom does the child live?		

	Child 3	Child 4
Family name		
Given names		
Date of birth (day / month / year)	/ /	/ /
Sex	<input type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
Mother's family name		
Mother's given names		
Father's family name		
Father's given names		
With whom does the child live?		

Part E: For applications for parenting orders

Has the applicant obtained a certificate from a registered family dispute resolution practitioner?
(Refer to section 60I of the *Family Law Act 1975*).

No Yes

If yes, attach a copy of the certificate to this application and go to Part F of this form.

If no, to obtain an exemption from filing a certificate you must either complete and file the form *Affidavit - Non-Filing of Family Dispute Resolution Certificate* or include the factual basis for the exemption in the affidavit you file in support of any order you are seeking.

Has the applicant received advice from a family counsellor or a family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence? (Refer to section 60J of the *Family Law Act 1975*).

No Yes

Part F: Other court cases and orders

Ongoing cases

Are there any ongoing cases in this or any other court about family law, child support, family violence or child welfare issues that involve any of the parties or children listed in this application?

No Yes

If yes, provide the following details for each ongoing case. (Attach extra pages as required.)

Court name and place

Next Court date

Names of parties

State the nature of the orders sought
(eg property settlement, parenting orders, child support)

Existing orders, agreements or undertakings

Are there any existing orders, agreements, parenting plans or undertakings to a court about family law, child support, family violence or child welfare issues concerning any of the parties or children listed in this application?

No Yes

If yes, either attach copies of any orders, agreements, parenting plans or undertakings or provide details below.

(If there is more than one order etc, attach extra pages as required.)

Court name and place

Date

Names of parties to the order, agreement, parenting plan or undertaking

Part G: For property and/or spouse/de facto partner maintenance applications

If the parties were in a de facto relationship that has broken down, complete Part H)

Have the parties entered into a financial agreement or a part VIIIAB Financial Agreement under the *Family Law Act 1975* or under any relevant state or territory legislation?

No Yes

If either party has a superannuation interest, have the parties entered into a binding superannuation agreement in relation to that superannuation interest?

No Yes

Is any party currently bankrupt or currently a debtor in bankruptcy proceedings started by either a creditor's petition or a debtor's petition or currently a debtor subject to a personal insolvency agreement?

No Yes

Is there a proceeds of crime order or current forfeiture application in relation to any of the property of any of the parties?

No Yes

If yes, attach a sealed copy of the order or application.

Part H: De facto relationship jurisdiction – financial causes

(subsection 4(1) of Family Law Act 1975 defines de facto relationship cause)

Complete **all** the boxes below if relying on the Court's jurisdiction to make orders for the benefit of a party to de facto relationship that has broken down.

Entitlement to apply and geographic requirements

(a) Did your de facto relationship break down on or after 1 March 2009?

No Yes

(b) Is the period or the total of the periods of the de facto relationship at least 2 years?

No Yes

(c) Is there is a child of the de facto relationship?

No Yes

(d) Has the applicant made substantial contributions and a failure to make an order or declaration would result in serious injustice to the applicant?

No Yes

(e) Is, or was, the relationship registered under a prescribed law of a State or Territory of Australia?

No Yes

(f) Were both parties to the relationship ordinarily resident in one or more of the Australian Territories or New South Wales, Queensland, Victoria or Tasmania for at least one third of the domestic relationship, or at the date the relationship broke down?

No Yes

(g) Did the applicant make substantial contributions in one or more of the Australian Territories or New South Wales, Queensland, Victoria, or Tasmania?

No Yes

Part I: Cross-vested jurisdiction

(Complete only if relying on cross-vested jurisdiction. Note: An affidavit *must* be filed – see Rule 4.06 of the *Family Law Rules 2004*)

If relying on a cross-vesting law, specify the Territory law relied on

Part J: Lawyer's declaration

If the applicant is filing this application without a lawyer, this part need not be completed.

However the applicant should obtain a copy of the information brochure *Marriage, Families and Separation* from Court staff when filing the application. If a lawyer is filing the application, then the lawyer must give the applicant a copy of the brochure and sign the following declaration.

I gave the applicant(s) a copy of the Family Law Courts' brochure *Marriage, Families and Separation*.

Signature of lawyer

Full name of lawyer:

Date: / /

Part K: Affidavit of Applicant(s)

Affidavits must be sworn or affirmed before a person authorised to witness affidavits

Applicant 1	Applicant 2
<p>I <input type="checkbox"/> swear / <input type="checkbox"/> affirm that:</p> <ol style="list-style-type: none">1. I am the applicant.2. I have read this Application.3. The facts of which I have personal knowledge are true.4. All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence.5. I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner - of all information relevant to the issues in the case.	<p>I <input type="checkbox"/> swear / <input type="checkbox"/> affirm that:</p> <ol style="list-style-type: none">1. I am the applicant.2. I have read this Application.3. The facts of which I have personal knowledge are true4. All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence.5. I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner - of all information relevant to the issues in the case.

Signature of Applicant 1

Place:

Date / /

Signature of Applicant 2

Place:

Date / /

Before me (signature of witness)

Before me (signature of witness)

Full name of witness (please print)

Full name of witness (please print)

Qualification of witness

- Lawyer
- Notary Public
- Justice of the Peace
- Other (specify)

Qualification of witness

- Lawyer
- Notary Public
- Justice of the Peace
- Other (specify)

IMPORTANT NOTICE TO RESPONDENT(S)

You should seek legal advice about this application.

If you do not want the court to make the orders sought in this application or if you want the court to make other orders, **YOU MUST:**

For proceedings in the Federal Magistrates Court of Australia

- file at the court a response, an affidavit and other relevant documents – including, in financial matters, a *Financial Statement*
- deliver a copy of the response, affidavit and other relevant documents to the applicant's address for service within 14 days, and
- attend at the hearing. **Please note: If you do not attend the hearing orders may be made in your absence.**

For proceedings in the Family Court of Australia

- within 14 days of service on you of the *Initiating Application*, file at the court a *Response to Initiating Application* and in a financial case, a *Financial Statement*. These forms are available at any family law registry or on the Family Law Courts' website www.familylawcourts.gov.au
- file an affidavit if interim or procedural orders are sought by either party. A form of affidavit in support of a response seeking or opposing interim parenting orders is available at any family law registry or on the Family Law Courts' website www.familylawcourts.gov.au
- file other documents, as required, depending on the orders you seek (see Rule 4.18 of the *Family Law Rules 2004*)
- serve on all other parties copies of the documents filed, at least 7 days before the court date shown on page one of this application, and
- attend at the hearing. **Please note: If you do not attend the hearing orders may be made in your absence.**

COVER SHEET

Document to be filed pursuant to Rule 24.01(1)(h) of the Family Law Rules

Mark [X] the box which applies

Marriage certificate

Family violence order

Birth certificate

Other order (specify) _____

This document may be attached to the front of one of the documents listed above pursuant to Rule 24.01(1)(h) of the Family Law Rules. It must not be attached to any other document.

Please type or print clearly and mark [X] all boxes that apply.

Filed in:

Family Court of Australia

Federal Magistrates Court

Family Court of Western Australia

Other, specify _____

Filed on behalf of:

(insert full name)

Applicant

Respondent

Independent children's lawyer

File number _____

Filed at _____

Filed on _____

Court location _____

Court date _____

Time _____

About the parties

APPLICANT 1

1 Family name as used now

Given names

APPLICANT 2

Family name as used now

Given names

RESPONDENT 1

Family name as used now

Given names

RESPONDENT 2

Family name as used now

Given names

Independent children's lawyer name (if applicable)

2 _____

NOTE: YOU DO NOT NEED TO COMPLETE ITEM 3 IF YOU HAVE ALREADY PROVIDED A CONTACT ADDRESS

3 What is the contact address (address for service) in Australia of the party filing this document?

You do not have to give your residential address. You may give another address at which you are satisfied that you will receive documents. If you give a lawyer's address, include the name of the law firm.

State	Postcode
Phone	Fax*
DX	
Lawyer's code	
Email*	

* Please do not include email or fax addresses unless you are willing to receive documents from the Court and other parties in that way.

AFFIDAVIT

Instructions for completion

1. This form of affidavit may be used in any proceeding where no other form of affidavit is applicable under the *Federal Magistrates Court Rules 2001* (the Rules).
2. Each paragraph in this affidavit must be numbered.
3. This affidavit must be sworn or affirmed before a person authorised by law to witness the swearing of affidavits; for example, a lawyer, notary public or Justice of the Peace.
4. Each page must be signed by the deponent (the person making the affidavit).
5. Any alteration in the affidavit must be initialled by the deponent and the witness.
6. You must complete address for service details in the footer on page 1. All correspondence concerning the affidavit will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
7. If the facts in the affidavit are supported by a document, a copy of the document must be attached to this affidavit. This document is then referred to as an 'annexure'. If there is more than one annexure refer to each by a number or letter; for example – 'Annexure 1' or 'Annexure A'. The annexure should also have page numbers. If there is more than one annexure, the page numbers must run consecutively until the last page of the last annexure. If it is impractical to annex a document, it may be separately identified as an exhibit; see Rule 15.28.
8. Each annexure must include a statement signed by the witness identifying the annexure as the document referred to in this affidavit. The wording of the statement is as follows:

This is the document referred to as [*insert annexure identification*] in the affidavit of [*insert deponent's name*] sworn/affirmed at [*insert place*] on [*insert date*] before me [*witness to sign and provide name and qualification*].

The statement must be signed at the same time as the affidavit and by the same witness.
9. The Court may strike out any material which cannot be used in evidence; for example, if it is unnecessary, scandalous or contains opinions of persons not qualified to give them. See Rule 15.29.
10. If the deponent does not have an adequate command of English, a translator must read or give in writing a translation of the affidavit and oath/affirmation in a language which is understood, and must certify in the signing clause that he or she has done so. Use the alternative jurat for the swearing/affirming of the affidavit and the translator's certificate.
11. Once complete, you need to file the original and a copy of this affidavit for each party to the matter with the court registry. The Court will keep the original and return the copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

Remove this instruction sheet before filing

**IN THE FEDERAL MAGISTRATES COURT
OF AUSTRALIA
REGISTRY: BRISBANE**

File number:
COURT USE ONLY
Court Location
Court date
Court time

TARA TAE FONTANA
Applicant

JOSEPH JO FONTANA
Respondent

AFFIDAVIT

Name of deponent: TARA TAE FONTANA

Date sworn / affirmed:/...../.....

I, (full name) TARA TAE FONTANA of (address, including State or Territory) 44 Ambrosia Street, Brisbane, Queensland 4000 and (occupation) Part-Time Office Worker make oath and say / affirm:

1. I am the Applicant in these proceedings.
2. I am the mother of Mary May Fontana born on the XXday of XXmonth XXyear. The respondent JOSEPH JOE BLOGGS is the father of the said child.
3. The respondent and I had a relationship that led to the birth of the said child. The respondent is registered as the father of the said child on the child's birth certificate. A copy of the said birth certificate is filed with these proceedings. OR
4. A DNA Parentage test conducted by XX (name of medical laboratory conducting the test) on XX

Filed on behalf of TARA TAE FONTANA
Prepared by TARA TAE FONTANA Lawyer's code _____
Name of law firm _____
Address for service in Australia 44 AMBROSIA STREET
BRISBANE State QLD Postcode 4000
Email _____ DX _____
Tel 07 12345678 Fax _____ Attention _____

(date) showed that the Probability of Paternity of the respondent is XXX%. Annexed hereto marked "A" is a true copy of the said report.

5. Pursuant to section 67B of the *Family Law Act 1975*, I am making a claim of \$XXX from the respondent by way of a lump sum for my maintenance and for reasonable childbirth expenses in relation to my pregnancy and the birth of the said child.

6. Details of my above claim are given in the following paragraphs.

7. **Medical costs**

Doctor/Specialist	\$500
Hospital	\$3000

8. **Outlays for birth/pregnancy**

Maternity clothes	\$460
Nursing bras and pads	\$350
Nappies	\$200
Bouncer	\$100
Pram	\$500
Bottles and sterilizer	\$200
Formula	\$100
Baby clothes	\$200
Baby cot and bedding	\$500
High chair	\$250
Baby capsule	\$200
Change table	\$250
Baby bath	\$50
Sub-total	\$3350

9. **My living costs during the childbirth period, i.e., two months prior to birth and three months after birth**

Rent (nominal rent)	\$140 per week x 20 weeks	\$2800
Food	\$70 per week x 20 weeks	\$1400
Telephone	\$7 per week x 20 weeks	\$140

Electricity \$9 per week x 20 weeks	\$180
Sub-total	\$4520
Grand total	\$10870

10. However, I am only claiming the amount of \$XXX from the respondent. I confirm that the outlays and my living costs mentioned above were incurred by me during the five-month childbirth period. My medical and hospital costs are incurred as a result of my pregnancy and are net of any Medicare and/or Health Fund refunds.

Sworn / Affirmed by the deponent
 at (place)
 on (date)/...../.....

 Signature of deponent

Before me:

 Signature of witness

Full name of witness:

Qualification of witness:

CHILD BIRTH EXPENSES CALCULATIONS

Sample document only

(1)	Medical costs			
(a)	Doctor/Specialist appointments			
	Name of doctor	Type of treatment	Date	What I paid
	<i>Dr XX</i>	<i>Consultation</i>		\$
	<i>Ms XX</i>	<i>Ultrasound</i>		\$
(b)	Hospital costs			
	Date of admission	Date of discharge	Name of Hospital	\$

TOTAL MEDICAL EXPENSES I PAID \$

(2)	Outlays for birth/pregnancy		What I paid
	Maternity clothes	x dresses	\$
		x pants/trousers	\$
		x night gowns	\$
		x shirts	\$
	Nursing bras and pads		\$
	Nappies		\$
	Bouncer		\$
	Pram		\$
	Bottles and steriliser		\$
	Formula		\$
	Baby clothes		\$
	Baby cot and bedding		\$
	High chair		\$
	Baby capsule		\$
	Change table		\$
	Baby bath		\$

TOTAL OUTLAYS FOR BIRTH /PREGNANCY \$

(3)	My living costs		
	Date child birth period started	Date child birth period ended	
	Number of weeks in my child birth period		20 Weeks
	Weekly rental on where I was living during child birth period	\$	
	x weeks in child birth period	<u>x 20</u>	
		TOTAL RENT	\$
	Weekly food on where I was living during child birth period	\$	
	x weeks in child birth period	<u>x 20</u>	
		TOTAL FOOD	\$
	Weekly telephone bill on where I was living during child birth period	\$	
	x weeks in child birth period	<u>x 20</u>	
		TOTAL TELEPHONE	\$
	Weekly electricity on where I was living during child birth period	\$	
	x weeks in child birth period	<u>x 20</u>	
		TOTAL ELECTRICITY	\$
	My average weekly during child birth period	\$.....	
	x weeks in child birth period		

TOTAL LIVING COSTS DURING CHILD BIRTH PERIOD \$

ADD	TOTAL MEDICAL EXPENSES	\$
	TOTAL OUTLAYS FOR PREGNANCY AND CHILD BIRTH	\$
	TOTAL LIVING COSTS DURING BIRTH PERIOD	\$
	TOTAL CHILD BIRTH EXPENSES CLAIM	\$