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## *Dean R. Love & Associates*

**Barristers & Solicitors**  
DRL Legal Pty Ltd (ACN 123 034 846)

**FAMILY LAW – CIVIL LAW – CRIMINAL LAW**

ABN 34 123 034 846

**Perth Office:**  
1<sup>st</sup> Floor, 231 Adelaide Terrace  
PERTH WA 6000

**Postal:**  
PO Box 3263  
PERTH WA 6832

Tel: (08) 9218 9993  
Fx: (08) 9218 9557  
[enquiries@drlegal.com.au](mailto:enquiries@drlegal.com.au)  
[www.drlegal.com.au](http://www.drlegal.com.au)

# **CHILD SUPPORT APPLICATIONS & THE FAMILY COURT**

This brochure provides information for parties to a Child Support Application under sections 98, 116, 123 or 129 of the Child Support Assessment Act.

The Family Court is only able to make Child Support Orders in certain circumstances. You should seek legal advice or contact the Child Support Agency on 131272 before making an application in the Family Court.

The Act, the Rules, the forms and the brochures referred to in this brochure can be obtained from the Family Court website. The forms and brochures can also be obtained from any registry of the Court.

The information in this brochure is provided in the following parts:

- **PART 1: Information for applicants only** if you are making an application to the Court you are the applicant.
- **PART 2: Information for respondents only** You are known as the respondent if the applicant names you in the application as the party against whom child support orders are sought.
- **PART 3: Information for both the applicant and the respondent.**

## **PART 1 *Information for applicants only***

### **HOW TO APPLY**

#### **Step 1 Completing your application**

##### **Complete:**

- **an Application for Final Orders** (Form 1); *and*
- **an affidavit**; *and*
- in certain cases (see the table below), a Financial Statement (Form 13).

In completing the application, you should take particular care in setting out what orders you want the Court to make. **It is recommended that you seek legal advice.**

Make sure that you have copies of all of the supporting documents that you are required to file with your application. These vary depending on your particular application. The table below sets out what is required and when.

You will need copies of all the documents (apart from the Marriage and/or Birth Certificate/s). The Court keeps the originals and you need enough extra copies so that everyone who is to be served with copies of the application and supporting documents gets a set (see Step 3).

#### **SUPPORTING DOCUMENTS THAT WILL NEED TO BE FILED:**

<b>Application or appeal type (including an application in a response)</b>	<b>Supporting documents required</b>
Section 98 Assessment Act (application for variation of a child support agreement)	<ul style="list-style-type: none"><li>• Marriage certificate or birth certificate/s</li><li>• Affidavit</li><li>• Financial Statement (Form 13)</li><li>• Copy of agreement (Rule 4.19)</li></ul>
Section 116 Assessment Act variation of a child support agreement) (application for departure from administrative assessment in special circumstances)	<ul style="list-style-type: none"><li>• Marriage certificate or birth certificate/s</li><li>• Affidavit</li><li>• Copy of relevant administrative assessment</li><li>• Financial Statement (Form 13)</li><li>• Copy of the objection lodged under s98X(1)</li><li>• Copy of any response under s98ZB(2)*</li></ul>

	<ul style="list-style-type: none"> <li>• Copy of notice of decision by child support registrar under s98ZC</li> </ul>
Section 123 Assessment Act (application for orders for child support in form other than a periodic amount)	<ul style="list-style-type: none"> <li>• Marriage certificate or birth certificate/s</li> <li>• Affidavit</li> <li>• Copy of relevant administrative assessment</li> <li>• Financial Statement (Form 13)</li> </ul>
Section 129 Assessment Act (application to vary an order for child support in a form other than a periodic amount)	<ul style="list-style-type: none"> <li>• Marriage certificate or birth certificate/s</li> <li>• Affidavit</li> <li>• Copy of order made under section 124</li> <li>• Financial Statement (Form 13)</li> </ul>

\* If you do not have a copy of this document you may file a summary of the response provided by the Child Support Agency (if any).

### **Time limits – usually 28 days**

There are **time limits for filing** certain applications and appeals under the Child Support legislation. This is usually within 28 days after you receive a notice from the Child Support Agency, but to be certain about time limits, you need to check Family Law Rules 4.21 and 4.22.

You can seek the Court’s permission to file an application after the time limit has expired but the Court will only allow this in special circumstances. You can obtain the documents you need to file in such circumstances by contacting a registry of the Court.

### **Step 2 Filing your application**

File the Application for Final Orders (Form 1), and any other documents listed in Step 1, at a registry of the Family Court. The Court will keep the originals and return the 3 copies to you for service (see Step 3).

On filing your application you will be given a date for a hearing. You will also be given:

- A Service Kit containing:
  - ~ An Acknowledgment of Service (Form 6);
  - ~ An Affidavit of Service (Form 7);

- 2 copies of the costs of children figures – this is an estimate of costs of maintaining children published by the Australian Institute of Family Studies (this can be accessed through the Family Court’s website: [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au));
- 2 copies of the following Court brochures:
  - ~ Child Support Applications (this brochure);
  - ~ Marriage, Families and Separation;
  - ~ Mediation – Pathway to Agreement.

### **Step 3: Serving the application**

You must arrange to serve by special service, a copy of the Application for Final Orders (Form 1) and copies of any documents filed with it:

- on the respondent to the application;
- if not a respondent – on each person who is a parent or eligible carer of the child;
- on the Child Support Registrar.

When serving the respondent with the application and other documents filed with it, you must also serve:

- these Family Court brochures:
  - ~ Child Support Applications (this brochure);
  - ~ Marriage, Families and Separation;
  - ~ Mediation – Pathway to Agreement; *and*
- the cost of children figures, published by the Australian Institute of Family Studies.

If serving the documents by post or electronic means you must also include an Acknowledgment of Service (Form 6) and when by post, a stamped self-addressed envelope (so that the respondent or other party can acknowledge that they have received the documents).

If the respondent or other party does not send back the Acknowledgment of Service you may need to arrange service by hand.

You must serve these documents as soon as practicable after you file the application in Court. If you do not, your application may not proceed on the Court date.

Read the Court’s Service Kit as it may help you carry out service. Once service is completed you must fill in the Affidavit of Service (Form 7) and file it at the Court.

## **Go to Steps 4-6 – under information for applicants and respondents**

### ***Part 2 Information for respondents only***

Following is a summary of the steps you may need to take in responding to a child support application or appeal.

#### **Step 1: The documents served on you**

You should have received this brochure at the same time as the following documents were served on you:

- an Application for Final Orders (Form 1) with the date, time and place for a hearing shown in the top right corner of the front page;
- an affidavit;
- a copy of any document/s lodged by any party to the case with the Child Support Registrar relevant to the application;
- a Financial Statement (Form 13) [if there is an application under sections 98, 116, 123 or 129 of the Assessment Act];
- the following Family Court brochures
  - ~ Marriage, Families and Separation;
  - ~ Mediation – Pathway to Agreement; *and*
- the cost of children figures, published by the Australian Institute of Family Studies.

**Carefully read all of these documents.** If any of these documents were not served on you, you may obtain a copy from a registry of the Court.

You are entitled to proper notice of the application and if you feel that you have not been given enough time, you should talk to the applicant as soon as possible to seek postponement of the hearing (the date, time and place and other details about this are provided on the top right hand corner of the first page of the application). If the applicant will not agree to postpone the hearing, the Court may at your request, in special circumstances, adjourn the hearing to another date. However, you will need to attend Court on the date given in the Application to make your request.

If you received these documents by post or electronic means you will also have received an Acknowledgment of Service (Form 6). To acknowledge receiving the documents served on you, you should sign the Acknowledgment of Service and return it to the applicant.

#### **Step 2: Filing your response**

IF YOU AGREE with the orders asked for in the Application for Final Orders, you should tell the applicant. It is possible to obtain an order by consent to finalise the application.

IF YOU DISAGREE with the orders asked for by the applicant or seek different orders, you must file a Response to an Application for Final Orders (Form 1A).

Depending on the application, and the orders you are asking for, you may also need to complete and file a Financial Statement (Form 13) and other supporting documents (see table below).

Make 2 copies of your Response (the Court keeps the original, one copy is for you and the other copy must be served on the applicant). You must file your Response and any supporting documents in the Family Court Registry.

<b>Response</b>	<b>Supporting documents required</b>
A response to an application under s98, 116, 123 or 129 of the Assessment Act	A completed Financial Statement (Form 13)
If: <ul style="list-style-type: none"> <li>• In the response you are seeking an order one of the above sections of the Assessment Act; <i>and</i></li> <li>• The application you are responding to does not seek orders under one of these sections i.e. you are raising the child support dispute as a new subject matter in the case, you will be regarded as the applicant in the child support application and must comply with Rule 4.19</li> </ul>	

**Step 3: Serving your response documents on the applicant**

You must serve the applicant with the documents you have filed at least 7 days before the hearing. If necessary you should read the Court’s Service Kit as it may help you carry out service.

**Go to Steps 4-6 – under information for Applicants and Respondents**

## **Part 3 Information for Applicants and Respondents**

### **Step 4 Preparing for the Hearing**

You must prepare in advance for the Hearing.

You must bring to the hearing (and any subsequent hearing) any documents you have or can obtain which are relevant to the application. In particular, if an application under sections 98, 116, 123 or 129 of the Assessment Act you are required to bring:

- a copy of your taxation return for the most recent financial year;
- your taxation assessment for the most recent financial year;
- your bank records for the 12 months ending on the date when the application was filed;
- if you receive wage or salary payments – your three most recent pay slips;
- if you own or control a business – the Business Activity Statements for the business for the previous 12 months;
- any other documents relevant to determining your income, needs and financial resources. This might include:
  - ~ (passbook) statements from your bank, building society, credit union or other financial institution;
  - ~ receipts or statements relating to hire purchase, personal loans, mortgage, lease, rent etc;
  - ~ receipts for expenses claimed in the Financial Statement (Form 13).

### **Step 5: The Hearing**

You must attend the hearing on the date you have been given (the Court will have put this date on the top right hand corner of the Application for Final Orders when it was filed). If the applicant fails to attend the hearing the Court may dismiss the application. If the respondent fails to attend, the Court may make the orders asked for by the applicant. The Court may also make orders as to costs.

It is possible, in some circumstances, to ask for the Court's permission to attend the hearing by telephone, provided this is done at least 7 days before the conference and you have informed the other party of your request. You should contact the registry about the procedure for this.

The conduct of the hearing may vary depending on the complexity of the application. However, the Court will allow:

- **the respondent** to ask the applicant questions about the information in the application and any affidavit or Financial Statement (Form 13) filed by the applicant; and
- **the applicant** to ask the respondent questions on the information in the response and any affidavit or Financial Statement (Form 13) filed by the respondent.

After this cross-examination the Court will allow both parties to make a short statement summarising the case and any relevant law. The Court will then reach its decision and make orders or reserve its decision and make orders at a later date. The order will be prepared by the registry and a copy posted to you.

### **Further information**

If you want more information about the procedure for making a child support application you may phone any registry of the Family Court of Australia or, if in Western Australia, the Family Court of Western Australia. Contact numbers are listed below. If you want more information on your legal rights or obligations or you wish to obtain independent legal advice, you need to contact a lawyer. If you have any difficulty obtaining independent legal advice, you might get assistance from a law society, a legal aid office or a community legal centre. Contact numbers for some of these are listed below.

### **About the terms used in this brochure**

- "The Assessment Act" means the Child Support (Assessment) Act.
- "The Registration Act" means the Child Support (Registration and Collection) Act.
- "The Rules" means the Family Law Rules.
- "The Act" means the Family Law Act.

### **Contact Details**

CHIEF JUSTICE'S CHAMBERS  
GPO Box 9991 ~ Melbourne, VIC 3001

CHIEF EXECUTIVE OFFICER  
GPO Box 9991 ~ Canberra, ACT 2601

### **Registries**

ALBURY (02) 6021 8944

ALICE SPRINGS	(08) 8952 8222
ADELAID	(08) 8205 2666
BRISBANE	(07) 3248 2200
CAIRNS	(07) 4041 2377
CANBERRA	(02) 6267 0511
COFFS HARBOUR	Contact the Brisbane Registry, (07) 3248 2200
DANDENONG	(03) 9767 6200
DARWIN	(08) 8981 1488
DUBBO	(02) 6841 5000
HOBART	(03) 6232 1725
LAUNCESTON	(03) 6334 2111
LISMORE	(02) 6621 8977
MELBOURNE	(03) 8600 3777
NEWCASTLE	(02) 4926 1255
PARRAMATTA	(02) 9893 5555
ROCKHAMPTON	(07) 4921 2939
SYDNEY	(02) 9217 7111
TOWNSVILLE	(07) 4722 9333
WOLLONGONG	(02) 4226 8200
WESTERN AUSTRALIA	(08) 9224 8222

FAMILY COURT OF WESTERN AUSTRALIA  
150 Terrace Rd, Perth, WA 6000