

How do I recover unpaid child support?

This factsheet will take you through the steps you will need to follow to enforce an unpaid child support debt.

Can the Department of Human Services (Child Support) help me recover unpaid child support?

Yes, if you are registered with the Department of Human Services (Child Support) (DHS) to receive child support, the DHS can use its enforcement powers to make people pay unpaid child support. If necessary, the DHS can start legal proceedings to make the paying parent pay the child support debt.

The DHS can decide not to chase a debt where:

- the cost of chasing the debt is more than the amount of money owed, or
- the debt is not legally recoverable (for example, if the paying parent who owes the child support debt is incapacitated and cannot work, has no assets, no income or they live in a country that does not enforce Australian child support debts).

What if I am not registered with the DHS?

If you are not registered with the DHS to receive child support then you are responsible for collecting and enforcing the unpaid child support debt yourself.

Legal Aid Queensland does not help people collect or enforce unpaid child support debts.

If private payments get behind or stop or if you cannot agree on the amount of child support that should be paid, you should contact the DHS and ask them to start collecting for you. They can take over responsibility for ongoing collection and any outstanding payments going back three months.

How can I register with the DHS?

If you do not have an online account, you can register online on the myGov website. Once you have an account, you can apply for a child support assessment online. The DHS recommends you use the online *Application for child support assessment* form to apply.

You can also use self service to fill in and submit the application form. You can also apply for a child support assessment over the phone by calling 131 272.



How do I enforce an unpaid child support debt?

1. Send a letter of demand to the paying parent who owes the child support debt

Address the letter to the paying parent who owes the child support debt and provide them with an opportunity to pay the debt in full or to make an arrangement to pay the debt.

Your letter must provide the paying parent who owes the child support debt with at least 14 days to respond.

Keep a copy of the letter and keep a record of when it was sent.

2. Tell the DHS you are going to start court proceedings

Write a letter to the DHS telling them you are going to start court proceedings to enforce the child support debt. Keep a copy of the letter and details of when it was sent.

You must give the DHS at least 14 days' notice before you start court proceedings.

You also need to get a certificate from the DHS giving information about the registered child support liability as evidence of your case. Attach it your affidavit.

3. Start your court proceedings

If the paying parent who owes the child support debt does not respond to your letter you will have to start court proceedings.

To begin court proceedings you need to complete the following documents, which can be downloaded from the Federal Circuit Court website: www.federalcircuitcourt.gov.au

- *Initiating Application (family law)*
- *Affidavit*
- *Financial Statement*
- *Enforcement Warrant — Seizure & Sale of Property* (if the person who owes the debt owns property)
- *Third Party Debt Notice* (if the person who owes the debt is owed money by someone).

These documents must be witnessed by a lawyer, justice of the peace or commissioner for declarations and then filed at the Family Law Courts Registry. You will not have to pay a filing fee.

You must file four copies of these documents—one for the court to keep, one for yourself, one to be served on the DHS and one to be served on the paying parent who owes the child support debt.

The court will stamp (seal) the documents and give you a court hearing date.

4. Serve documents on the paying parent who owes the child support debt and the DHS

'Service' is a legal term used to describe giving or delivering court documents to another person in a way that satisfies the court that the person has received them. A free Service Kit is available on the Federal Circuit Court website www.federalcircuitcourt.gov.au entitled Service Kit (Do it Yourself), which has useful information about how to serve documents.

You can't personally serve the documents yourself. You can also pay a 'process server'—a person who delivers or 'serves' documents by handing them to the person concerned—to serve the documents on your behalf. You must serve a copy of the filed documents on the DHS along with an *Acknowledgment of Service*. You must also serve a copy of the filed documents and a copy of the Child Support Applications brochure on the paying parent who owes the child support debt. The brochure can be printed from the Federal Circuit Court website www.federalcircuitcourt.gov.au



5. File the documents required to show that the paying parent and DHS are aware of your court proceedings

Once you have received the *Acknowledgment of Service* from the DHS and you have the completed *Affidavit of Service*, you can either file these documents on the Commonwealth Courts portal website www.comcourts.gov.au or file these documents in person at the Family Law Courts Registry.

To file documents on the Commonwealth Courts portal you will need to register on the website to be able to log in and access your own court case online.

The court will not make any orders unless satisfied the paying parent and DHS are aware of your court proceedings.

6. Going to court

The Federal Circuit Court website provides information about the court process in a Youtube clip called 'Court Tour'. Visit www.federalcircuitcourt.gov.au to view this clip.

7. Do I need to get legal advice?

Yes. You should get legal advice before starting any court proceedings to understand your options. Court proceedings can be expensive and time consuming.

If you decide to proceed with a court application and you are not successful in proving your case, the court may order you to pay the paying parent's costs for the court proceedings.

You can get legal advice from:

- Legal Aid Queensland – call 1300 65 11 88 (for the cost of a local call from a landline in Australia) for free advice or visit www.legalaid.qld.gov.au
- a community legal centre – visit www.qails.org.au or call 1300 65 11 88 to find services in your area
- a private solicitor – call the Queensland Law Society on (07) 3842 5842 for the names of lawyers who specialise or are accredited in family law.

8. Notify the DHS

After court you must let the DHS know of any court orders made.

Do you need extra help accessing our services?

We are committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. To have this publication explained in your language, please phone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland on 1800 998 980.



If you are deaf or have a hearing or speech impairment you can contact us using the National Relay Service. Visit www.accesshub.gov.au and ask for 1800 998 980. These are free services.



Your local Legal Aid Queensland office:

BRISBANE

44 Herschel St, 4000

BUNDABERG

3rd Floor, WIN Tower,
Cnr Quay & Barolin Sts, 4670

CABOOLTURE

Ground Floor, Kingsgate
42 King St, 4510

CAIRNS

Level 2, Cairns Square Complex,
42-52 Abbott St, 4870

INALA

Level 1, Inala Commonwealth
Offices, 20 Wirraway Pde, 4077

IPSWICH

Level 7, 117 Brisbane St, 4305

MACKAY

Ground Floor,
17 Brisbane St, 4740

MAROOCHYDORE

Ground Floor, M1 Building
1 Duporth Ave, 4558

MOUNT ISA

6 Miles St, 4825

ROCKHAMPTON

Ground Floor, 35 Fitzroy St, 4700

SOUTHPORT

Level 2, 7 Bay St, 4215

TOOWOOMBA

1st Floor, 154 Hume St, 4350

TOWNSVILLE

Level 4, Northern Securities
Building, 22 Walker St, 4810

WOODRIDGE

1st Floor, Woodridge Place,
Cnr Ewing Rd & Carmody St, 4114

For more information
about our services visit
legalaid.qld.gov.au

or phone **1300 65 11 88** or **1300 650 143**
(Aboriginal and Torres Strait Islander Information Line)



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