

DNA paternity testing in family law: what you need to know

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Date: **Monday July 27, 2026**

Can a court order a DNA test to determine who a child's biological parent is? In some parenting disputes, one party disputes their biological connection to a child, and this is where parentage (or paternity) testing comes in. In this article, we explain how the Family Law Act treats the presumption of parentage, when the Court can order DNA testing, and what happens if a party refuses to comply.

DNA and ‘parentage’ testing

Often it is the biological father whose genetic relationship to the child is in question, which is why you might have heard of the phrase ‘paternity test’ or ‘paternity testing’. In Australian family law, paternity tests are referred to as ‘parentage tests’ to more broadly cover who may be tested to determine parentage of a child.

Parentage testing is typically based on DNA, and individuals can usually provide a mouth swab sample for testing.

The Family Law Act and presumption of parentage

The Family Law Act 1975 sets out a list of circumstances where a man is presumed to be the biological father of a child. These circumstances include:

- When a child is born to a woman and her husband during the marriage – section 69P
- When a child is born to a woman who was living with a man between 20 to 44 weeks prior to the birth – section 69Q

- When a person's name is registered as a parent of the child in state or federal records, such as the Register of Births, Deaths and Marriages – section 69R
- When there has been a finding by a court that a person is the parent of a child – section 69S
- When a man has signed a formal and legal document acknowledging they are the father of a child – section 69T

The above presumptions are 'rebuttable', or able to be disproven, if the Court is satisfied on the balance of probabilities that a party is not the parent of a child. To assist a finding of parentage, the Court may make orders for the parties to provide evidence supporting their position as to parentage.

Alternatively, the Court can make an order for a parenting testing procedure to be carried out to assist their determination.

When can the court order parentage testing?

Under the Family Law Act, the Court only has the power to make an order for parentage testing if parentage of the child is a question of issue in the proceedings. This means that the Court will not make an order for parentage testing if the parentage of a child is established or there is no evidence suggesting a third party may be the actual biological parent.

The Court can make a parenting testing order which directs a person to submit to a medical procedure, provide a bodily sample, or provide relevant information about their medical and family history.

It is entirely within the Court's discretion as to whether a parentage testing order is made. In the case of Bhagat &Sandhu (No 3) [2024] FedCFamC1F 301, the Court determined that despite the mother's admitted infidelities during the relationship, there was insufficient evidence that another party could be the biological father around the time of the child's conception. The Court further considered that it would not be beneficial for the children, and so declined to make an order for parentage testing.

The effect of parentage determination may mean that you have parental responsibility for a child. Parental responsibility includes decisions about a child's day-to-day care, long-term arrangements and providing child support, although it is important to note that there is no presumption under Australian family law that both parents have equal shared parental responsibility.

For more information about parental responsibility and what orders the Court can make in relation to it, read our explainer blog here .

Who pays for parentage testing?

If parties are agreeing to undergo parentage testing outside of court proceedings, they can negotiate if the costs for the tests will be shared or paid in full by one party.

If the Court makes an order for parentage testing, it can also make orders it considers just in relation to fees for undergoing the testing and the preparation of any necessary reports.

Do I have to comply with a court-ordered parentage test?

Under the Family Law Act, a person who does not follow a parentage testing order made by the Court will not be liable for any penalty for refusing to undergo the test. This is different to other types of parenting orders, where parties are required to comply with finalised parenting orders made by consent or by the Court.

However, the Court does have the power to draw any inferences it considers just if a party does not undergo ordered testing, particularly in circumstances where the ordered party is the one disputing their parental status.

If the Court orders you to undergo parentage testing and you refuse and/or fail to follow testing orders it may be interpreted that any potential testing results would not have been favourable to you. In the case of Hedwin &Palmer [2023] FedCFamC2F 1639, the respondent father repeatedly failed to attend his appointments for DNA parentage testing, despite consenting to the order. The Court considered that the father's failure to undergo testing in circumstances where he had denied he was the child's biological parent, in addition to evidence provided by the applicant mother, was sufficient to infer that the outcome of the test would have shown the father was in fact the biological parent. The finding in this case led to a Court order that the mother and the father be assessed for child support.

Although failing to undergo court-ordered parentage testing will not guarantee a finding of paternity in every case, it is important to consider the effects of refusing to comply with such an order.

Can I do a paternity test without the other parent knowing?

Some DNA laboratories offer tests that do not require both parents to provide biological samples, including at-home testing kits. These tests may use 'discreet' samples for the child, such as hair, nail clippings or used toothbrushes. It is important to check with the specific laboratory as to the accuracy of each discrete sample type, and if these types of tests will be accepted by the Court.

For the Court to accept the report into evidence, the parentage test must be done through a laboratory accredited by the National Association of Testing Authorities. You can find a list of accredited parentage testing laboratories here.

Key takeaways

- In some parenting disputes, one party may question whether they are a child's biological parent, which is where parentage (or paternity) testing comes in.
- The Family Law Act 1975 sets out several circumstances where a man is presumed to be a child's father, though this presumption can be legally disproven.
- The Court can only order parentage testing where parentage is genuinely in dispute in the proceedings.
- There's no penalty for refusing a court-ordered parentage test, but the Court can draw negative inferences from a refusal.
- At-home or discreet testing kits are available, but results generally won't be accepted by the Court unless the test is done through a NATA-accredited laboratory.

- Speaking with an experienced family lawyer can help you understand your options if parentage is in question.

Get help from a family lawyer

It is important to note that DNA evidence of biological connection to a child is not the only evidence the Court may consider in determining if an individual has parental responsibility of a child. If you have concerns about parentage or parentage testing, our experienced family lawyers can advise you about your options and assist you in obtaining results.

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