

Applying to the Court for orders

This fact sheet is for people who want to file an application with the Court for orders. Applying to the Court for orders should be a last resort and only considered after all genuine efforts to resolve the matter have failed. The exception is consent orders (see below).

For help resolving a dispute out of court, go to www.familyrelationships.gov.au or call 1800 050 321. These services provide assistance to anyone who is affected by family relationship or separation issues.

For more information about what you must do before applying to the Court for parenting orders, see the brochure 'Compulsory Family Dispute Resolution – court procedures and requirements'. For additional information about what you must do before applying to the Family Court, see the brochures *Before you file – pre-action procedure for parenting cases* and *Before you file – pre-action procedure for financial cases*.

What are orders?

When you apply to the Court, you need to list the specific orders you are asking the Court to make. The orders may relate to parenting or financial issues, or in some cases, both.

There are three main types of orders:

- **Final orders** bring a matter to a close.
- **Interim orders** are usually made in urgent cases and last until other orders or final orders are made. Generally, you cannot file an application for interim orders unless you have filed an application for final orders.
- **Consent orders** are orders that you and the other party agree on. You and the other party can apply for consent orders to be made without going to court. Consent orders have the same legal effect as if they had been made by a judicial officer after a court hearing.

The Court may not grant the orders that you request. The Court considers the facts of each case and in making orders:

- in parenting cases, considers the best interests of the child, and
- in financial cases, that the terms are just and equitable.

Applications for final orders and consent orders attract a fee.

Who can apply for orders?

PARENTING – any person concerned with the care, welfare and development of a child can apply for parenting orders. This may include the child's parents, grandparents or other relatives.

You can apply for parenting orders at any time. You can apply before or after separation or divorce.

FINANCIAL

Married couples

Any person who is, or has been married can apply for financial orders in the Family Law Courts. However you must do so within 12 months of your divorce order taking effect. After this time, you need the Court's permission to apply.

De facto couples

A person who has been a party to a de facto relationship may be able to apply for financial orders in the Family Law Courts. However your application for de facto financial orders must be made within 2 years of the breakdown of your relationship. After this time, you need the Court's permission to apply.

For further information and to see if you are eligible to apply, see the Attorney-General's Department fact sheet:

- *New De facto Property Regime: Property division when de facto relationships break down – new Commonwealth law for separated couples* available from www.familyrelationships.gov.au or 1800 050 321.

How do you apply for orders?

This section relates to applications for parenting and financial orders. There are some specific applications which require different documents; for example, contravention and financial enforcement. Most contravention or enforcement applications are filed in the Federal Magistrates Court. If the order you are seeking to enforce has been made in the Family Court and less than 12 months have past since the order was made, you may file in the Family Court.

For more information about specific applications go to the Applying to the Courts section at www.familylawcourts.gov.au or call 1300 352 000.

In the Family Court

For final orders, you must pay the relevant fee and file:

- 1 *Initiating Application (Family Law)*
- 2 *Financial Statement* (for financial cases only)
- 3 Certificate from a Family Dispute Resolution practitioner (for parenting cases only, unless one of the exceptions outlined in the brochure *Compulsory Family Dispute Resolution – court procedures and requirements* applies). In respect of final orders, you are required to make a bona fide endeavour to resolve the dispute prior to filing and you may be called upon to demonstrate that you have taken this step prior to filing.
- 4 As applicable a photocopy of your marriage/divorce order and/or a photocopy of the child/children's birth certificate/s.

If a fee applies to the application, you must also pay the fee or request an exemption or waiver of the fee by filing an *Exemption* form or a *Waiver of Court Fees* form.

For interim orders, you must file:

- 1 An *Application in a Case* (an *Initiating Application (Family Law)*) should already have been filed in the current proceedings
- 2 Affidavit in support of the interim orders. In respect of parenting orders your affidavit needs to address those matters set out in section 60CC.

For consent orders, where no *Initiating Application (Family Law)* has been filed, you must pay the relevant fee and file:

- 1 *Application for Consent Orders*
- 2 Terms of settlement prepared in accordance with the supplement
- 3 As applicable a photocopy of your marriage/divorce order and/or a photocopy of the child/children's birth certificate/s.
- 4 Three copies of the consent order certified as true copies of the original consent order.

The fee for an *Application for Consent Orders* is a fixed fee and under the Regulations cannot be reduced.

In the Federal Magistrates Court

You must pay the relevant fee and file:

- 1 *Initiating Application (Family Law)* if you are commencing a case or an *Application in a Case* where an *Initiating Application (Family Law)* has already been filed in the current proceedings.
- 2 Affidavit
- 3 *Financial Statement* (for financial cases only).
- 4 Certificate from a Family Dispute Resolution practitioner (for parenting cases only, unless one of the exceptions outlined in the brochure *Compulsory Family Dispute Resolution – court procedures and requirements* applies).

General information about fees

If a fee applies to the application, you must also pay the fee. The registry cannot accept an application for filing without payment of the fee. In some cases, you may be eligible to pay a reduced fee or if the matter is urgent, the payment of the fee can be deferred for a short period of time (usually no more than one month). For further information on reduced fees see the 'Guidelines' in the Fees sections of www.familylawcourts.gov.au. You can apply to pay a reduced fee by filing an *Application – Reduction of court fees on the basis of financial hardship* or an *Application – Reduction of payment of court fees – general* (if for example you are in receipt of legal aid or the holder of an eligible benefit card).

What if someone else has started the case first?

If you have been served with an application filed by someone else and you are named as a respondent, you may still apply for orders. You do so by setting out the orders that you seek in a document called a response. The titles differ slightly in the Family Court and the Federal Magistrates Court. The documents that you have been served with will give you the name of the document that you will need to file.

Once you have filed this document, you are in the same position as the other party who started the case by filing an application document in the first place. You are not at a disadvantage just because the other party started the case first.

Where do you apply?

The Family Law Courts comprise the Family Court and the Federal Magistrates Court. Both Courts deal with family law matters and you should file with the court best suited to deal with your application.

The Family Court deals with more complex matters. These may include, for example:

- in parenting cases, if the case involves a child welfare agency and/or allegations of serious sexual abuse, severe family violence or mental health issues, international child abduction or special medical procedures
- in financial cases, if the case involves multiple parties, valuation of complex interests in trust or corporate structures including minority interests or complex issues concerning superannuation.

All other applications should be filed in the Federal Magistrates Court. The Federal Magistrates Court deals with less complex matters that are likely to be decided quickly. You may prefer to seek legal advice before choosing in which court to file your application.

An *Application for Consent Orders* must be filed in the Family Court. For more information about consent orders, see the *Application for Consent Orders Kit*. Applications for Consent Orders attract a filing fee. In the Federal Magistrates Court if you reach an agreement after filing an application, you may file a consent order for consideration by the federal magistrate.

Divorce and child support applications should be filed in the Federal Magistrates Court. For more information about divorce or child support and which forms to file, see the *Application for Divorce Kit* or the brochure *Child Support Applications*.

Things to remember

- Make all cheques and money orders payable to the 'Collector of Public Monies'.
- Where you allege child abuse or family violence, you must also file a *Form 4 – Notice of Child Abuse or Family Violence* and an affidavit.
- You must file the original and at least two photocopies of all documents (a copy for each party), except for your marriage/ divorce order or the child/ren's birth certificates. If there are more than two parties, make additional copies.
- Once filed, you must arrange to serve the documents on the other party or parties.

Legal advice

You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.