

June 2009

# How to run your family law case

A do-it-yourself kit to help you prepare a family law case and represent yourself in court



 **Victoria  
Legal Aid**  
Lawyers And  
Legal Services

# How to run your family law case

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Victoria Legal Aid  
350 Queen St  
Melbourne 3000  
Tel: 9269 0120 Country callers: 1800 677 402

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## Victoria Legal Aid

### Our vision

Victoria Legal Aid is a leading and responsible force for community access to the legal system and for social justice.

### Our values

Victoria Legal Aid is committed to: serving our clients and coming with integrity, fairness and transparency at all times; respecting continuous improvement across the organisation.

### Our services

We can help you with legal problems about criminal matters, family support, immigration, social security, mental health, discrimination, debt and traffic offences.

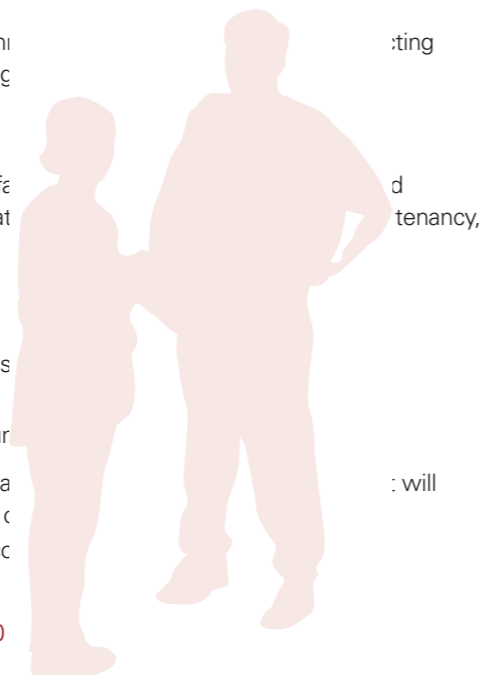
Our free legal services include:

- information over the phone in English and other languages
- booklets and other materials in English and other languages
- seminars and workshops
- legal advice across Victoria, including most courts and tribunals

If you want ongoing help from a lawyer, you can apply for a grant to depend on your financial situation and your legal problem. You can:

- pay a lawyer to help reach agreement or speak for you in court
- go to our family dispute resolution service.

Call us to find out how we can help you on 9269 0120 or 1800



## About this kit



This kit is for people involved in disputes under the *Family Law Act 1975* ('the Act') about children and property.

The law has changed. From 1 March 2009, if you were in a de facto (including same sex) relationship you are now able to use the Act to settle your property dispute.

**Get legal advice.**

At the back of this kit are some of the court forms you may use. Make sure you use the current court forms as these change. You can get them at [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or get copies from the court on 1300 352 000.

The *Family Law Rules 2004* set out the rules of the Family Court, not the law relating to family law (which is contained in the Act). The *Federal Magistrates Court Rules 2001* set out the rules in that court. Both Rules are updated regularly. It is important that you read these Rules before you start your court case. You will also find important sections of the Act and Family Law Rules in the appendices as well as examples of parenting and property orders.

**Note:** The Family Court and Federal Magistrates Court will be merging soon. Check with the court.

We refer to sections of the Act by writing the letter 's' followed by the section and subsection. For example 's.60CC(2)(a)' means subsection 'a' of paragraph 2 of section 60CC of the Act.

Preparing your own family law case takes time and can be hard. It is important to be organised, prepared and well-informed at all times. Doing your own research can help you understand the law and how it may affect your case.

This kit provides information only and is not a substitute for legal advice. If you are involved or may be involved in a court case, get legal advice.

### What do these words mean?

To help you, we have explained some words in 'What do these words mean?' at the front of this booklet. These words are also highlighted in **bold** the first time they appear in each section.

### Other references

- A reference to 'child' includes children.
- A reference to 'the court' or 'the family law courts' includes the Family Court of Australia ('Family Court') and the Federal Magistrates Court unless otherwise stated.
- References to 'the law' or 'the Act' means the *Family Law Act 1975* (Commonwealth).
- References to 'the Rules' means the *Family Law Rules 2004* made by the Family Court of Australia.

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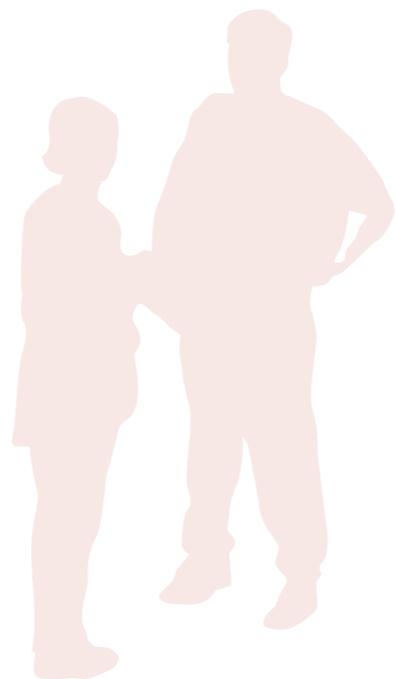
## Changes to the law

The law changes all the time. To check for changes you can:

- call the Victoria Legal Aid Legal Information Service
- read the 'New law' and 'Legal issues' pages on the Victoria Legal Aid website at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
- visit a Victoria Legal Aid office or a community legal centre.

## Human Rights Charter

You have rights, freedoms and responsibilities under Victoria's new Charter of Human Rights. For more information about the charter go to [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au) or call the Victorian Equal Opportunity & Human Rights Commission advice line on 9281 7100 or 1800 134 142 (toll free).



## ► What do these words mean?



**affidavit** – a written document that lists evidence for the court. An affidavit is signed in front of an authorised person (such as a lawyer or Justice of the Peace) and sworn or affirmed to be true

**affirm** – a declaration or promise that something is true. This is made if you do not want to swear on the Bible, Koran or other religious book

**allegation** – when someone accuses another person of having done something

**applicant** – the person applying for a court order

**assets** – things you own, such as property, land, shares, bank deposits, jewellery, clothes and so on

**consent** – agreement

**consent orders** – an agreement between you and the other party which is approved by the court and then made into a court order

**costs** – money for legal or other costs which a party may be ordered to pay in a court case

**deponent** – a person making an affidavit

**disclose / disclosure** – to make all the information relevant to the case available in the time that the court requires

**evidence** – information used in court to prove something

**family consultant** – a psychologist or social worker who helps the court and the parties in children's cases

**federal magistrate** – a person who makes sure the court case follows the rules and makes the decisions in the Federal Magistrates Court

**file / filing** – to give documents to the court. The court stamps the documents and gives you back a copy

**final orders** – the last orders that the court makes to finish a court case. Once a final order is made, the case is over

**independent children's lawyer** – a lawyer appointed by the court to represent the best interests of the child

**interim** – short term. An interim hearing looks at the issues that need to be decided in the short term (for example, where the children will live). Interim orders may be made. Later a final decision or agreement is made into final orders

**judge** – the person who makes sure the case follows the rules and who makes the decisions in the Family Court

**judicial officer** – judge, federal magistrate or registrar

**party / parties** – a person or legal entity (for example, a bank) involved in a case

**privilege** – a legal rule that says confidential information that you have given to, or received from, your lawyer cannot be used in court

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**registrar** – a person who works for the court and who has been given power to do different things

**magistrate** – the person who makes sure the court follows the rules and who makes the decisions in the Magistrates' Court

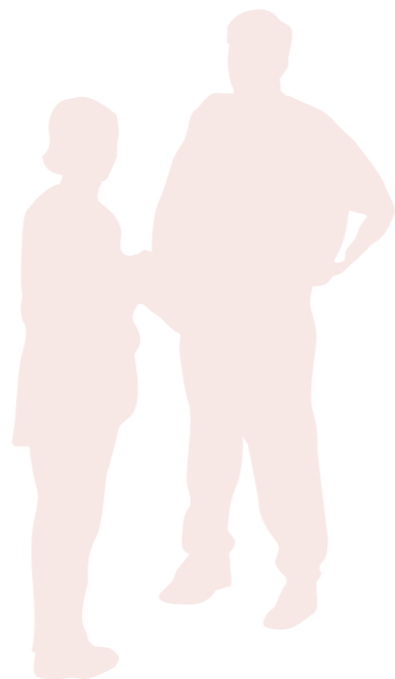
**respondent** – a person named by an applicant as the other party in a court case

**serve / service** – the legal delivery of a document, by certain rules of the court

**subpoena** – a document that says you must appear in court or give certain documents to the court at the request of the party

**swear** – when you swear on a Bible, Koran or other religious book that something is true

**witness** – a person who gives evidence in writing or in person



## ▶ Chapter one – Alternatives to going to court



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

### Family dispute resolution

In most cases where your dispute is about your children you will need to do family dispute resolution before going to court. You can also do this anytime after you have started your court case.

Family dispute resolution includes counselling, mediation, arbitration and other types of conciliation.

In family dispute resolution, an independent, trained dispute resolution practitioner can help you sort out your dispute in a safe environment. Family dispute resolution is more likely to lead to an outcome that suits you both and it is cheaper than going to court.

Anything said to a family dispute resolution practitioner during a session is confidential and cannot be used in court. There are some exceptions to this. Ask the family dispute resolution practitioner to explain confidentiality to you.

Victoria Legal Aid has a family dispute resolution service called Roundtable Dispute Management (RDM). If you are eligible for a grant of legal assistance from us, you can have a lawyer represent you throughout the process. You do not have to be in the same room as the other party during the session (called a 'conference'). If you are not eligible, you can still use the RDM service without a lawyer, or you can pay for a private lawyer. If the other party starts the process, you may be invited to be in a conference at the RDM service. When this happens, you will both have a conference manager to help prepare and support you. If you choose not to have a lawyer, you can arrange to have a support person there, for example a friend or grandparent.

All agreements made through the Roundtable Dispute Management service are written down, usually as consent orders or parenting plans.

See 'Consent orders' and 'Parenting plans' on page 7.

You can call 9269 0120 or 1800 677 402 for more information about the Roundtable Dispute Management service and your eligibility. You can also call the Family Relationships Advice line on 1800 050 321 or visit [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au) for information on family dispute resolution practitioners in your area. They can also give you details of other services that can help your relationship with your ex-partner. A fee may be charged.

See 'Where to get help' on page 53.

Family dispute resolution may not be right for every situation, for example, in some situations where there is family violence or child abuse or a risk these will happen. Family dispute resolution may not happen if you cannot make decisions equally because you feel scared or unsafe.

If you have experienced family violence or are worried about your safety tell the family dispute resolution service immediately.

See 'Where there is family violence or child abuse' for more information.

See 'Where to get help' for a list of services.

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Other situations where family dispute resolution may not be right include:

- where your children have not been returned from visiting your ex-partner
- if property may be sold, lost or disposed by your ex-partner.

These situations need urgent legal assistance.

Family dispute resolution may also not be right if:

- one person refuses to do it, or
- a person has trouble doing it because of a mental illness or a drug or alcohol abuse problem.

## Family dispute resolution and parenting orders

If you are applying for a parenting order you will need to attach a certificate from a family resolution dispute practitioner to your application. Section 60I of the Act sets out the rules for this. You also need to do this if you are applying to change an existing order.

The certificate will say that:

- you have done family dispute resolution and you both made a genuine attempt to sort out an agreement
- you have done family dispute resolution and one or both of you did not make a genuine attempt to come to an agreement
- you tried to do it (and the other person did not turn up or refused to go), or
- in the opinion of the family dispute resolution practitioner, you do not need to do it.

You do not have to do family dispute resolution if:

- you are applying for **interim** (short term) orders or **consent orders** (where you both agree)
- the matter is urgent
- you or the other person cannot do it because of where you live or if you are physically or mentally unable (for example, because of a disability)
- there is family violence or child abuse or there is the risk of these happening
- you or the other person have contravened (broken the rules) and seriously disregarded a parenting order made during the last 12 months

See Section 60I (5) and (9)(a) to (f) and 60J of the Act.

If you do not wish to do family dispute resolution because of these reasons, you need to ask for this in your application for a parenting order. You need to attach an **affidavit** saying which subsection your reason is under and why you cannot do it. Check with the court about the affidavit form you need to use for this kind of application. Include any **evidence** you have. If necessary, use attachments.

See 'Structure of an affidavit' in 'Chapter seven – Affidavits'.

If you do not wish to do family dispute resolution because of child abuse, family violence or the risk of these you also need to include other information in your affidavit. You need to state that you have gotten information from a family counsellor or family dispute resolution practitioner about services and options available to you.

The court will look at your reasons and the evidence and decide if you do not need to go to family dispute resolution. Get legal advice.

## Consent orders

You do not have to go to court if you and your ex-partner can agree about how to sort out the issues in dispute.

To make your agreement legally enforceable through the Family Court you need to **file** (give to the court) consent orders in that court.

You can do this by filling out an Application for Consent Orders – See Appendix 1.

You need to give detailed information about each part of your application. This needs careful preparation. If it is a parenting order you need to tell the court whether or not there have been **allegations** of family violence or child abuse. If there have, you need to explain how the order you want will deal with these allegations. For all other orders you must address this in an annexure attached to your consent order application.

See 'Annexures' in 'Chapter seven – Affidavits'.

Examples of children's and property orders are found in Appendices four and five.

A kit to help you fill out a consent order form is available from the Family Court or can be downloaded from the family law courts' website. Go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) You can use this kit as a checklist to fill out the application properly.

Once the Family Court approves your application, the consent orders have the same legal effect as any other court order.

You cannot apply for consent orders in the Federal Magistrates Court first up. However, if a case is started in this court and gets sorted out later, consent orders can be made showing what has been agreed.

## Parenting plans

A parenting plan is a written, signed and dated agreement between parents (and sometimes others) that sets out arrangements for the care of children. Other people, like grandparents or other relatives can be involved in a parenting plan, where it is in the best interests of the child.

It is not legally enforceable unless it was registered with the Family Court before 14 January 2004. A parenting plan made after that time will have no legal force. A court must, however, look at your most recent parenting plan if you apply later for parenting orders that are different from the plan. Your parenting plan must have been signed and dated for the court to consider it.

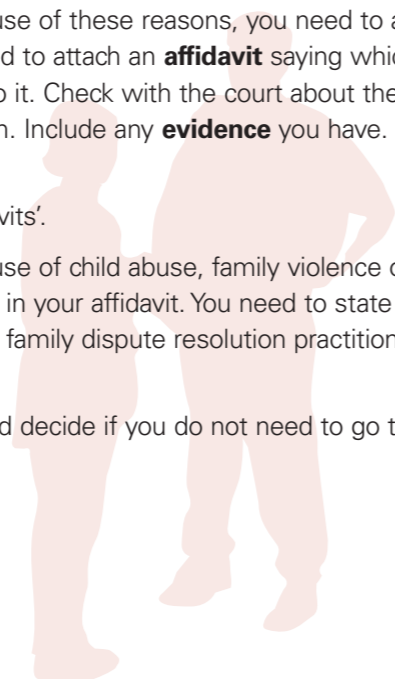
If you have a parenting order made on or after 1 July 2006, the Act allows you to change the order by making a parenting plan that is different. You must follow the plan in the areas where it is different to the order. The court cannot, however enforce a parenting plan. Only a parenting order can be enforced.

The court can also say that the parenting order cannot be changed by a parenting plan. This may happen if the court thinks that one party may use threats or intimidation to force the other to make a different parenting plan.

Any parenting plan made using threats or intimidation by any of the people involved will not be recognised under the Act.

A parenting plan may include:

- whom the child lives with and the time a child may spend with another person
- how parental responsibility is shared including major long-term decision making
- the maintenance of a child (but not child support under the *Child Support (Assessment) Act 1989*)
- how the parties will communicate with each other when exercising parental responsibility



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- how the child will communicate with another person (for example, letter, email, text messaging, telephone)
- how disputes about the plan later on may be sorted out (for example, using family dispute resolution)
- how to change the plan when the circumstances of the child or parties change
- any aspect of the care, welfare or development of the child
- grandparents or other relatives' involvement.

A parenting plan can be changed or stopped by the written agreement of the parties who made the plan. This cannot happen for those parenting plans registered in the Family Court before 14 January 2004.

It is important that you get legal advice when making a parenting plan or if you are having trouble doing what the parenting plan says.

## Binding financial agreements

You can also make an agreement about financial matters by using a binding financial agreement. Binding means to make an agreement legally enforceable. These agreements are also known as 'BFAs'.

You can make binding financial agreements before, during or at the end of a marriage. Defacto (including same-sex) couples are now able to enter into binding financial agreements recognised under the Family Law Act. There are strict requirements before a financial agreement can be considered binding. For example, both you and your ex-partner must see a lawyer. Get legal advice.

It is important to get legal advice before you start negotiating and again before you sign an agreement. Make sure you get legal advice from a lawyer who has not given your ex-partner advice.

## Pre-action procedures

The Family Court has pre-action procedures that you have to do. These procedures are found in the Family Law Rules, Volume 2, Schedule 1 ('the Rules'). The pre-action procedures vary according to the type of dispute. Read the Rules to find out what you must do for your own case.

See Appendix two.

The courts' website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) has information on what to do before you file your application. You can also get this information from the court registry.

## Family dispute resolution

The Rules require you to try dispute resolution such as negotiation or conciliation before starting a case about property or spousal maintenance. In parenting cases you must also make a genuine effort to sort out your dispute. Exceptions may apply, for example, where there are allegations of family violence, child abuse or in situations of urgency.

## Duty of disclosure and exchange of documents

Each person involved in the case must give (to the court and to the other party) all the information relevant to the case, during the time period that the court requires. This is known as 'disclosure'. You must begin this before you put in your application. You need to do this until **final orders** are made.

See 'Chapter eight – Disclosure and subpoenas' and Appendix two.

## ▶ Chapter two – Where there is family violence or child abuse

Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

If there is family violence or child abuse you may need to go to court. The court is very concerned about the impact that family violence has on a child – whether the child saw or heard the violence or if they were hurt themselves. Any violence in your past or present relationship is very important to the court. **It is important to get legal advice about this.**

If you need to go to court, you may be able to use a safe room there and use separate entry and exit points in the building. You may be able to attend court by phone or video. Contact the person managing your case or call the courts to find out what is available. For more information go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

## How the Family Law Act defines family violence

Family violence is defined in the Act as physical or threatening behaviour towards a family member or their property, which causes that person to reasonably fear for their personal wellbeing or safety. See s.4 of the Act. Rules regarding family violence in the Act include sections 60CF, 60J, 60K and 69ZW.

Any behaviour that causes you to reasonably fear for your safety or wellbeing is included whether this is actual threats, physical violence or controlling behaviours.

The court will look at whether a 'reasonable' person would fear for their safety or wellbeing in the same situation.

If you or the children are at immediate risk of harm, do not wait, call the police on 000. There are specialist family violence services that can also help you.

See 'Where to get help'.

## How to tell the court

To tell the court about family violence or child abuse, you need to file a 'Notice of child abuse or family violence' form. You also need to file an **affidavit** to support what you have written in the Notice.

See 'Chapter seven – Affidavits', and Division 2.3.1 of the Act to read about filing a Notice of child abuse or family violence.

There are penalties for making false statements in court cases. If the court finds that a person has knowingly made a false statement during a court case, that person must pay some or all of the other person's **costs**. This could include, for example, saying that family violence or child abuse happened or denying to the court that family violence or child abuse happened. This applies to all false statements in court, about any subject.

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## What the court must do

The court must take quick action if there are **allegations** of family violence or child abuse or the risk that these might happen. The court, family dispute resolution practitioners and counsellors must tell the Department of Human Services about the allegations.

The court is able to order the Department of Human Services or any other agency or organisation to provide documents and information about the people involved. Any person who told the court about violence, abuse or the risk of these, will have their identities kept secret. The court must admit into **evidence** (use and make available) any documents it gets if it intends to use these when making a decision.

## Family violence intervention orders

Part VII (seven) Division II (two) of the Act covers existing local family violence intervention orders and how they work with family law court orders.

Both parties must notify the family law court and **file** copies of the order if there are family violence intervention orders and they were:

- final (not opposed by the other **party**), or
- contested orders (where the parties may have given evidence in court and the **magistrate** made the decision to make an order).

You need to file a copy of the order when your court case starts or as soon as you can after the order is made. This applies to family violence intervention orders that were made to protect a child or a member of the child's family. A person who is not a party to the court case but is aware that such a family violence intervention order exists can also tell the court.

If you and your partner were married you can also apply for an injunction as part of your family law case. An injunction works in a similar way to a family violence intervention order. Get legal advice.

## Family violence and parenting orders

A major consideration for the court when making a parenting order is the need to protect children from harm or the risk of harm. Sections 60CC and 60CG of the Act must be considered by the court when working out the child's best interests. These include:

- family violence involving a child or a member of the child's family
- any family violence order that applies to the child or a member of the child's family.

If the court thinks that any later parenting plans may be made using threats, intimidation or coercion, it can order that a parenting order not be changed by a parenting plan made later. To find out more about family violence, family violence intervention orders and family law court orders, go to Victoria Legal Aid's website: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) to see the family violence fact sheets. You can also call 9269 0223 to order publications on intervention orders and family law.

See 'Family dispute resolution and parenting orders' in 'Chapter one – Alternatives to going to court'.

## Family violence and family dispute resolution

If there has been family violence or child abuse or the risk of these, you do not have to take part in family dispute resolution before **filing** an application at court. See s.60J of the Act. Tell the court registry or the family dispute resolution practitioner immediately about the violence or risk. The court case must be managed by the **judge** or **federal magistrate** so that it protects the people involved from family violence or the risk of family violence.

See 'Family dispute resolution' in 'Chapter one – Alternatives to going to court'.

## Magellan Program

If a 'Notice of child abuse or family violence' has been filed in the Family Court with allegations of very serious physical abuse and/or sexual abuse of children, the application is most likely to be listed to the Magellan Program.

Magellan is a special court list for cases involving the most vulnerable children. The case is managed by the judge and the Magellan **registrars**. Expert investigations and assessments are ordered. An **independent children's lawyer** is appointed for every child. The court aims to complete the case within six months. A **family consultant** will follow up the case after the trial is finished.

See 'Family consultants and family counsellors' and 'Independent children's lawyer' in 'Chapter four – Children'.

# How to run your family law case

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## ▶ Chapter three – Applying to a court

Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

When disputes cannot be sorted out through family dispute resolution, starting a court case is an option for both or all parties.

**Note:** The Family Court and Federal Magistrates Court will merge soon. Check with the court.

### Choosing the right court

Most family law cases are now heard in the Federal Magistrates Court. You will need to decide which court is best for the kind of case you are involved in. The decision about where to apply can depend on several things.

#### Where you live

If you live in a metropolitan (city and suburbs) area you apply directly to the Family Court or to the Federal Magistrates Court, depending on some of the other factors listed below.

If you live in regional (country) Victoria you can apply through the local (State) Magistrates' Court to begin with. Interstate readers should check if this is possible in their state or territory.

The Magistrates' Court makes orders by agreement. It cannot hear disputed cases (where parties disagree with each other), unless both parties agree to the court hearing the case. If your case cannot be sorted out in a Magistrates' Court, it can be given to the Family Court or Federal Magistrates Court to hear. The family law courts in metropolitan Melbourne are located in the city and at Dandenong. The court also travels to outer suburban and country areas for sittings. A sitting means when the court is operating. These sittings are described as 'circuits'.

The courts usually sit for one week in each area. To get a list of dates when the court operates in the country (circuit dates), contact the court or visit their website. Go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or call 1300 352 000.

If you want your case to be heard in a particular circuit, give your application to the court with a letter asking for this to happen. If you have already started your court case and want your case to be transferred to circuit, ask for an order from the court to do this. If the other **party** agrees, ask for a 'transfer order' by **consent**.

The Family Court and Federal Magistrates Court can also transfer cases from one court to the other.

#### The complexity of the case

Children's and property cases are held in both the Family Court and the Federal Magistrates Court. Some more difficult or detailed children's cases are only heard in the Family Court. For example, cases likely to run more than two days.

The Family Court is the only court able to consider complex issues to do with marriage. For example, whether a marriage is legal or has been annulled (cancelled). These types of applications are rare.

### Costs

Application **costs** are different between the Family Court and Federal Magistrates Court. If more than one court can hear your case, you can choose the cheaper option.

### Procedural issues

If you apply to the Family Court you have to follow the pre-action procedures described earlier, unless exceptions apply.

See 'Pre-action procedures' in 'Chapter one – Alternatives to going to court'.

If you are applying for a parenting order in either court you first have to make a genuine effort to sort out your dispute, although there are some exceptions to this.

See 'Family dispute resolution and parenting orders' in 'Chapter one – Alternatives to going to court'.

You can also go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or call 1300 352 000 for assistance. This service helps people who need advice on divorce, family law procedures and court services.

### Making an application

The person who **files** (gives) an application to the court first is called the **applicant**. The person who files a response to an application with the court is called the **respondent**. It does not affect your case if you are the applicant or respondent.

The courts divide their forms into **interim** and **final orders**. Interim orders are temporary orders. They apply until the court makes a final decision or the case is sorted out by agreement. You need to say in the application form if you want interim and final orders, or just one or the other.

### Responding to an application

If you are served (given) an application from your ex-partner or the other party in the dispute, you can choose to:

- Disagree with some or all of the orders the other person has asked for and apply for different orders. You can do this by **filing** a Response.
- Agree to the orders the other person has asked for. In this case you, sign a **consent order** and file a 'Notice of address for service'.
- Do nothing and allow the court to decide if it will grant orders in favour of the applicant.

Do not ignore any application if you do not want those orders made. The applicant may get those orders against you if you do not take part in the court case.

### Court documents

#### Forms

The 'Initiating application' form and the 'Response to an initiating application' form are used for both the Family Court and the Federal Magistrates Court.

In the Family Court you can also use the 'Application for final orders' and 'Response to an application for final orders' which do the same as the 'Initiating application' forms.

You can use the 'Initiating application' form for both interim orders and final orders. You need to fill out both areas in the form, asking for the orders you seek. In the Family Court you can also use an 'Application in a case' and 'Response to an application in a case' to apply and respond to interim orders'. The other forms used in each court are generally similar. Court forms can change.

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Make sure you use the most recent version of the forms and the correct form for the court you are applying to. You can download the current forms at [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or get them from the court registry. The courts can tell you about which forms to use, call 1300 352 000.

The Federal Magistrates Court sometimes accept Family Court forms if they follow the court's rules.

See Appendix one for a list of commonly used forms.

## Documents to hand in with an application

The first time you file (hand in) an application with the court, you must include an original or certified copy of the:

- marriage certificate
- divorce certificate (if applicable)
- birth certificate of the child (if you have not been married).

Bring in the originals as the **registrar** may ask to see them.

You can apply to the Registry of Births, Deaths and Marriages in the state in which you were married or in which your child was born for a certified copy of the relevant certificate. If you cannot get a certified copy of your marriage certificate or child's birth certificate, you need to prepare an **affidavit**. The affidavit needs to set out the details of your marriage and the reasons you cannot get a copy of the relevant certificate.

You can use the one application form for both the Federal Magistrates Court and the Family Court. There is an affidavit at the end of the form which needs to be filled in.

If you are filing the Initiating application form for both interim and final orders in the Family Court you need to file a separate affidavit for the interim orders. The Family Court has an affidavit form on its website: [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or the court can send you one.

In the Federal Magistrates Court you need to file an Application in a case form if you want interim orders as well as final orders. You also need to file a separate affidavit at the same time as filing your Application or Response. You do not need a separate affidavit if you apply for interim orders. You can get these forms from the court or their website.

These forms and requirements can change. Always check with the court first.

See 'Chapter seven – Affidavits'.

## Where to file your application

Once you have completed your Application or Response you must file them at the court with any documents which support your case. You can post your application or give it to the court yourself.

Before filing the documents, make enough copies of the originals for each person involved in the case. Keep a copy for your own records too. Original documents are kept in a file at the court. Find out your file number after you have given these to court as you need to quote it in future documents.

After you have given the documents to the court, they are stamped with the court's official seal (stamp). It is then up to you to serve (deliver) a sealed copy of all documents on the other party or parties.

## Court fees

You may be able to apply not to pay the fee. This might happen if you are having serious trouble paying. Ask the court staff for more information. Always check with the court registry for changes in fees.

## Fee costs

### Family Court

\$155 Application for final orders or Initiating application form

\$155 Response to an application for final orders (or Response to Initiating application form)

### Federal Magistrates' Court

\$155 Initiating application form

\$155 Response to Initiating application form

These fees can change without the court giving notice

## Arranging service of court documents

You need to arrange to **serve** a sealed copy of your Application or Response and any other documents on the other party as soon as possible if your application is in the Family Court. If your application is in the Federal Magistrates Court, these forms must be served:

- at least seven days before the first court date
- at least three days before the hearing date fixed for that application if the application is for orders after your court case has already started.

A sealed copy means that the court must stamp and sign the copies before you serve them.

A copy of all documents served on the respondent (or applicant) also needs to be served on any other parties (including the **independent children's lawyer**, if there is one involved). The response does not have to be served personally but must be served at least seven days before the court date.

You cannot serve court documents yourself. You need to arrange for someone else over the age of 18 to serve the documents. This person can be a family member or friend, or you can hire a 'process server'. A process server is a person who is hired to serve legal documents. Look at the Yellow Pages for listings of process servers. Note that the person serving the documents cannot be someone with an 'interest' in the case. For example, a person named in your application.

The Response can be served by post to the other party or parties by sending it to the 'address for **service**' (this address is on the application you have been served with).

For more information on serving documents see [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

The person serving the documents should get an 'Acknowledgment of service' signed by the respondent. Afterwards, the person serving the documents needs to complete an 'Affidavit of service'. You can download these forms from the family law courts website or get them sent to you by calling 1300 352 000.

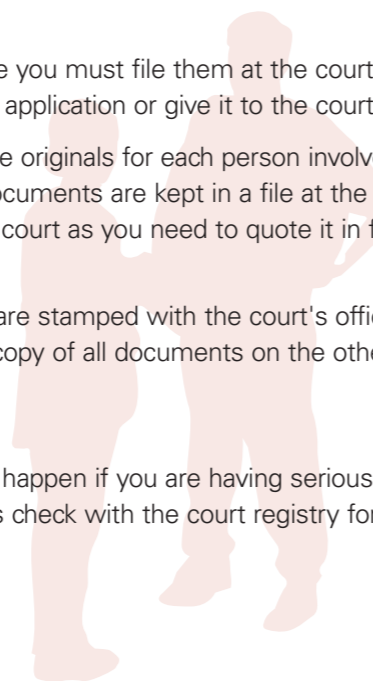
Both the forms need to be filed with the court.

If you are unable to serve the other party, you need to apply to the court for:

- substituted service (service of documents on another person) or
- dispensation of service (court permission not to serve the documents).

You do this by making an interim application to the court and supporting your application with an affidavit. **Keep copies.**

As well as keeping copies of all court documents, you also need to keep copies of anything in writing that you send to the other party.



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If an independent children's lawyer is appointed, send them a copy of any letter you send to your ex-partner, or his or her lawyer. Serve the independent children's lawyer with copies of all court documents which you want to use in court.

Independent children's lawyers must be served as they are a 'party' to the proceedings. This gives the independent children's lawyer the opportunity to participate fully. Show you have included the independent children's lawyer by inserting 'cc' at the end of any letters, for example:

Yours faithfully  
Jenny Brown  
cc Independent children's lawyer

For more information about the independent children's lawyer see 'Chapter four – Children'.

## Responding to an application

### Family Court

You need to file a 'Response to an application for final orders' (or 'Response to an initiating application' if the application was made using that form). You need to file this within 14 days of receiving it, along with a Financial statement if there is property included in your case. If the application is for interim orders you need to file a 'Response to an application in a case'. File these forms with an affidavit.

See Family Law Rules 4.19 and 9.02 for other documents you might need to file. All the documents and forms need to be served on the other party at least seven days before the first court date.

### Federal Magistrates Court

You need to file the 'Response to an initiating application' with an affidavit, financial statement (if there is property included) and any supporting documents. This needs to be served on the other party within 14 days of receiving the application.

For cases in either court, get legal advice before you respond and make sure you go to court on the court date. The date will be on the application you receive. Call the court well before, if you cannot go on that date.

If you do not come to court, orders may be made without you having a say.

## Division 12A

Division 12A makes the family law courts' processes shorter and more informal and flexible.

See Section 67N for the principles of how children's cases are to be run and Section 69ZQ which sets out the duties and powers of the court in Division 12A cases.

Some of the main features of Division 12A processes are:

- The **judge** or **federal magistrate** tells you how the case is to run in court. It may be run as an orderly discussion or it might run more formally. They decide the issues that are looked at, the **witnesses** who will attend, and when and if reports are needed.
- Most rules of **evidence** do not apply, unless the judge or federal magistrate says so.
- Evidence begins on the first day of the hearing or trial. Anything said is part of the evidence.
- Most of the evidence comes from you and the other parent or party.
- The judge or federal magistrate actively manages the case. They speak directly to you and you can say in your own words what you would like for the children or other issues.

- The judge or federal magistrate controls the case by focusing on what is best for the children. If it is a property or financial case, the court focus on what is just and equitable (fair) for each party.
- The judge or federal magistrate can make orders or decisions at any time during the case, not just at the end.

Division 12A is used in:

- All children's cases (parenting, child maintenance and parentage), where the application has been filed on or after 1 July 2006.
- Any property or financial case where the application has been filed on or after 1 July 2006 and both people agree to Division 12A being used.
- Any case where the application has been filed before 1 July 2006, both parties agree and the court grants 'leave' (permission).

In children's cases, a family consultant helps you and the other party throughout the court process. They are sworn in as a witness on the first day of the trial in the Family Court and at any time during a hearing in the Federal Magistrates Court.

For more information on family consultants see 'Chapter four – Children'.

You can also find information on child-related proceedings and other cases using Division 12A on the courts' website at [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au).

## The court process

There are different steps throughout a court case between the Family Court and Federal Magistrates Court. The family law courts' website has information on each step of the process. Visit [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) and read in more detail before you start your court case.

Remember, you can sort out an agreement at any time during the court process by filing consent orders. These are orders which set out what you have agreed upon and which you file with the court to legally formalise your agreement.

## Family Court

### Children's cases

A registrar lists the case to the Child Responsive Program, which involves a series of meetings with a family consultant and the parties involved. The family consultant helps you sort out the issues in dispute and any help you may need. They can also help you to talk with each other and work out possible arrangements for the children. The family consultant gives you a Parenting Questionnaire to complete which outlines your situation and the arrangements you would like in place.

Any agreement reached during these meetings may be made into legally enforceable orders later. You can also ask for interim orders to be made at this stage.

If no agreement is reached, a date is set for a procedural hearing or other pre-trial event in front of a judge or registrar.

### Property cases

A case assessment conference is held with a registrar. The conference aims to help you reach agreement on issues. Any agreement reached may be made into legally enforceable orders. You can also ask for interim orders to be made.

You are given a financial Questionnaire and a Balance sheet to complete. A Balance sheet lists the parties' **assets**, liabilities and financial resources.

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The registrar may refer your case for dispute resolution. If no agreement is reached, a date is set for a procedural hearing or other pre-trial event in front of a judge or registrar.

## Joint children's and property cases

Children's matters are usually looked at first and you may begin with several meetings with the family consultant. You may be referred to family dispute resolution for financial matters and/or have to go to a conciliation conference. The conference aims to help you reach agreement on issues. If an agreement cannot be reached, a date is set for a procedural hearing or other pre-trial event in front of a judge or registrar.

## The trial

Not all cases have the same court events. The judge manages your case as they think appropriate, so things may happen differently.

You no longer get a trial notice under the new system. You may have a procedural hearing or a review by the registrar several weeks before the trial date. At these meetings the registrar checks to see that all documents have been prepared and filed and everything is ready for the trial to begin. If either party has not obeyed orders or directions, the registrar will want to know why.

You may attend a 'call over' in front of the judge and registrar. The judge wants to know details about all issues in dispute. It can take up to a few hours. The judge decides what evidence will be used. Make sure you are prepared.

For these meetings you should have a summary of the issues and a list of witnesses and documents you would like to use (and the reasons why). The Questionnaire (and Balance sheet if applicable) that you completed is considered by the judge. The judge sets a date for the trial to begin.

The family consultant and registrar speak to the judge and give their recommendations about your case.

The remaining days of the trial are called the 'conclusion hearing'.

**Remember, if you have an urgent issue that needs to be decided quickly, let the registrar or family consultant know. Interim orders can be made.**

### Questionnaires

The Questionnaire is a very important document for your court case. The Questionnaire asks about current arrangements and the orders you seek. You need to complete the Questionnaire carefully. Get legal advice and ask the lawyer to help you fill it in. Ask the court when you need to file this.

## Federal Magistrates Court

The Federal Magistrates Court website explains the major stages in proceedings. The Federal Magistrates Act and the Federal Magistrates Court Rules set out the court powers and rules. You can see these on [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

The Federal Magistrates Court aims to have cases heard as quickly and cost-effectively as possible. To help do this, the court uses a 'docket' system to keep cases before the same Federal Magistrate from first court date to final hearing.

Proceedings start when you apply to the court. Applications must be supported by an affidavit. When the application is filed, a first court date is given. Each party or their lawyer must go to court on this date.

On this first day in court (often called the 'return date' of 'first return date') the court may:

- tell the parties what they need to do before the next court date
- order the parties to do family dispute resolution
- make a date for the next hearing or the final hearing
- have an interim (short) hearing
- make a final decision about the application.

Applications about property may be sent to a conciliation conference before any court hearing takes place. Applicants for parenting orders must have already completed family dispute resolution with the other party. There are exceptions to this.

See 'Family dispute resolution and parenting orders' in 'Chapter one – Alternatives to going to court'.

There are also pre-action procedures in the Federal Magistrates Court. Read the information on pre-action procedures at: [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

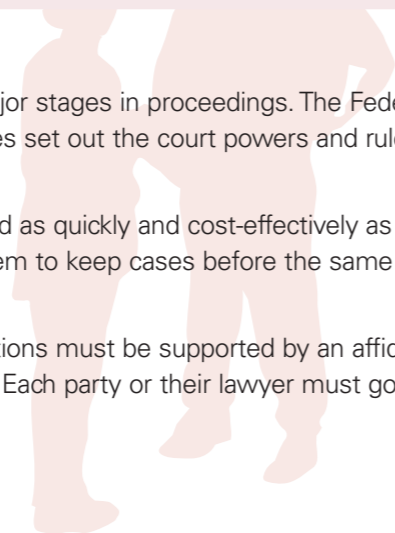
On the first court date, the court will generally set a date for the final hearing of the application. The final hearing is where all parties present their evidence and have it examined.

The court aims to hear all cases within six months of filing (but there can be delays). The court tries to limit hearings to two days for hearing a family law case. If it is likely to be longer than this or is complex, a case may be sent to the Family Court.

The Federal Magistrates Court may conduct an interim hearing and make interim (short-term) orders. An interim hearing looks at the issues that need to be decided in the short-term (for example, where the children will live) until a final decision can be made. If the matter is urgent, an interim hearing can be heard on the first court date if the court has time, or at the next earliest date. The Federal Magistrates Court aims to limit the number of interim hearings in preference to giving a case an early final hearing. Interim orders can, however, be made at any time.

Usually, the Federal Magistrates Court does not keep longer cases in its lists. These are sent to the Family Court. Occasionally, the court keeps a longer case because, for example if:

- the case is more complicated than the court first thought or
- it is in the interests of justice for the court to continue to hear the case.



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## ▶ Chapter four – Children



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

The principles of children's rights and parenting obligations are set out in Part VII (seven) of the Act. They apply to all children, whether or not their parents:

- are married or were married
- are or were living together (cohabiting)
- have never lived together.

The court has to apply the Act to the facts of each case before making a decision about a child. The court's main consideration is the best interests of the children.

See Appendix three.

To decide this, the court looks at the factors in Section 60CC (See box).

### The best interests of the children in Section 60CC

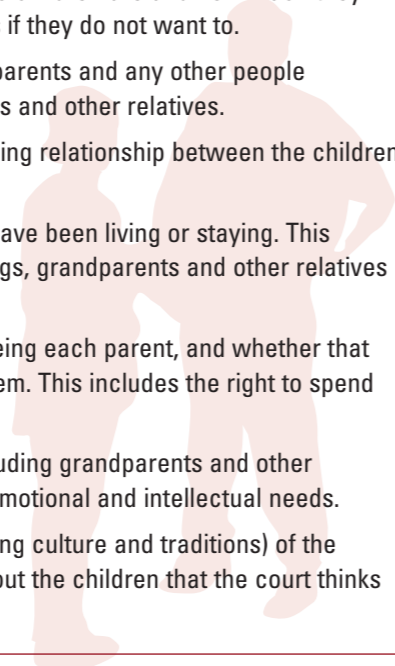
When making a parenting order, the court must look at the following primary (most important) and additional (other) considerations.

#### The primary considerations are:

- The benefit of children having a meaningful relationship with both of their parents.
- The need to protect children from physical and psychological harm. This includes children being physically or psychologically hurt, being neglected or seeing family violence.

#### The additional considerations are:

- Children's views – the court will look at how mature children are and how much they understand. Children do not have to express views if they do not want to.
- What kind of relationship children have with their parents and any other people significant to them, including siblings, grandparents and other relatives.
- Whether each parent will encourage a close, ongoing relationship between the children and the other parent.
- The likely effect of any change to where children have been living or staying. This includes separating them from either parent, siblings, grandparents and other relatives or other people important to their welfare.
- The practical difficulty and expense of children seeing each parent, and whether that will affect their right to have a relationship with them. This includes the right to spend time with and/or communicate with each parent.
- How much each parent and any other person (including grandparents and other relatives) can provide for the children's physical, emotional and intellectual needs.
- The maturity, sex, lifestyle and background (including culture and traditions) of the children and of each parent, and anything else about the children that the court thinks is important.



- The rights of Aboriginal or Torres Strait Islander children to enjoy their culture, including with others of that culture.
- Each parent's attitude to the children and to the responsibilities of being a parent.
- Any family violence involving the children or a member of their family.
- Any family violence order that applies to children or a member of their family. The order must be a final order or an order that was made after being contested (challenged in court) by the other person.
- Whether the order will mean less risk of everyone coming back to court.
- Anything else the court thinks is important.

Section 60CC(4) says that the court must also consider how much each parent has participated in their responsibilities as parents, including:

- The extent to which each parent has been involved with decisions about major long-term issues about the children.
- How much time each parent has spent with and communicated with the children.
- How the parents have encouraged or assisted each other to spend time with and communicate with the children.
- Whether each parent has maintained the children or failed to do so. For example, paying child support or maintenance on time.
- In particular, the events that have happened and the circumstances that have existed, since separation.

If the court is making a consent order (an order where all the people involved agree), the court may (but does not have to) consider the primary and additional considerations in deciding the children's best interests (Section 60CC(5)).

### Preparing your case

Look up Section 60CC of the Act and go through the factors that relate to your case. You need to bring these factors to the attention of the court. You can do this by preparing an **affidavit**.

See 'Chapter seven – Affidavits'.

Other important sections of the Act are Section 60B (which explains the best interests of the children) and Section 65C (who may apply for a parenting order). Read these to prepare your case.

See Appendix three.

When the court compares the Act to the relevant facts of each case, it must also consider other decisions made by **judges** and/or **federal magistrates**. These decisions are called 'case law'. Case law is used with the Act to make the decision in your family law case.

It may be a good idea to do some research and try and find case law that has similar facts to your case.

You can get case law from most law libraries including Victoria Legal Aid's free public law library or search the family law courts or Austlii websites.

See 'Where to get help'.

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## Applying for parenting orders

The court no longer makes 'residence', 'contact' and 'specific issues' orders but the same kinds of arrangements for children are included in what are now called parenting orders.

Parents (including same-sex parents), grandparents and other relatives or anyone concerned about a child's welfare can apply for parenting orders. They can also be included in parenting orders when it is in the child's best interests.

Parenting orders can include where the child lives and who the child spends time or communicates with. Parenting orders can also include child maintenance and specific issues such as education, holidays and sport and religious, cultural and medical matters. Parenting orders can also include:

- how parental responsibility is to be shared between the parties, including decisions about major long-term issues
- how the parties communicate when exercising parental responsibility (for example, using email, telephone or text messaging)
- how disagreements about the order are sorted out
- what steps are taken before an application is made to the court to change the order or orders
- any aspect of the care, welfare or development of a child.

Look at s.64B of the Act for information on what can be included in a parenting order.

When the court makes a parenting order it begins by giving the parents equal shared parental responsibility, unless:

- there is family violence or child abuse, or
- if it would not be in the children's best interests.

See Section 61DA of the Act. If the court finds there is equal shared parental responsibility, it must look at both parents sharing equal time with the children.

If equal time is not practical or not in the children's best interests, the court then asks if spending 'substantial and significant time' with the children would be in their best interests.

Substantial and significant time must include:

- weekdays, weekends, holidays and other times
- time that allows the parent to be part of the child's normal day
- days or events that are special to both the child and the parent. (See Section 65DAA of the Act)

The court can order that children spend any length of time with either parent. These arrangements must be practical and in the best interests of the children.

Some parenting orders made after 1 July 2007 can only be changed later by another order. This only happens if the court believes that later parenting plans may be made using threats or violence.

See 'Parenting plans'.

## Parenting orders and dispute resolution

In most cases, you now need to participate in family dispute resolution before you apply for a parenting order. You also need to do this before you apply to change a parenting order.

See 'Family dispute resolution'.

## Interim (short) orders

An interim hearing is a short hearing where the court makes temporary orders while you are waiting for a final decision. If you have a Division 12A case, interim orders can be made at any time throughout the trial or hearing.

At an interim hearing the court will use the information you have **filed** to make a decision or interim order. Only in exceptional circumstances will the court hear **evidence** from you and your **witnesses**.

Common applications for interim orders include:

- children's matters that cannot wait until a final hearing or trial
- urgent cases involving children. For example, stopping a person from taking a child out of the country ('injunction') or finding ('recovering') a child who has been taken ('recovery order').

If you believe your case is urgent, you can ask the court for an urgent hearing. Ask the **registrar** when you file your application. To do this, the first order on your application should read: *'That this case be deemed urgent and that all times be abridged'*.

You need to explain why your case should be heard urgently. This is done in an affidavit. Both courts have affidavit forms you can use.

See 'Chapter seven – Affidavits'.

See Appendix four for examples of wording you might use for interim or **final orders**. You can also see more information about the different types of orders on the family law fact sheets at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## Family and expert reports

In many cases involving children, the court asks a **family consultant** or other expert to prepare a family report. This report gives the court an independent view of the dispute and family relationships. It may include the child's views. You may have to pay some or all of the cost of the report if this is ordered privately.

## Independent children's lawyer

An independent children's lawyer may be appointed when a dispute is difficult or complicated. The independent children's lawyer used to be called a 'child representative'. The name has changed but the role is the same.

An independent children's lawyer helps the court decide what arrangements are in the child's best interests. You may have to pay some or all of their **costs**.

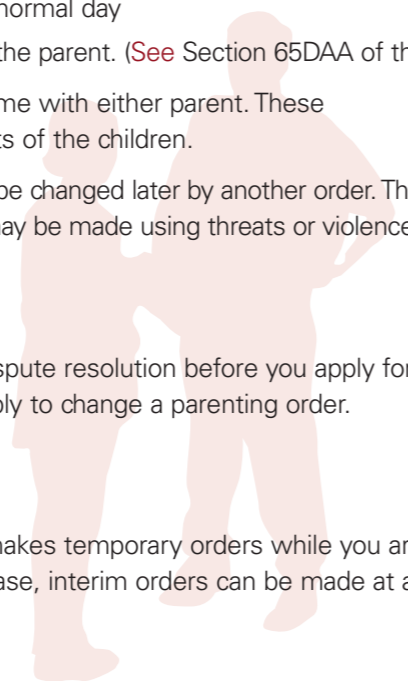
See Victoria Legal Aid's information sheet on the independent children's lawyer. You can order this from our website at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or by calling 9269 0223.

## Family consultants and family counsellors

In children's cases the court may appoint a 'family consultant'. Family consultants are child and family specialists whose role is to advise people involved in family law cases.

The court can ask for advice from family consultants and order you to see one. The court may ask the family consultant to prepare a family report for the court case. Anything said to a family consultant is not confidential and can be admitted (used) in court as evidence. The family consultant is sworn in as a witness during the court hearing.

Counsellors or mediators who work outside of the court are called 'family counsellors'. Anything said to a family counsellor is confidential, although there are some exceptions to this. For example, if the information given is about a child at risk of harm. Ask the family counsellor and family consultant to explain confidentiality to you.



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## Will the court ask to speak to the children?

The judge or federal magistrate may ask to speak with the children. This does not happen very often. The court may direct that the **independent children's lawyer** and family consultant be there too, when the child meets the **judicial officer**. The family consultant may make a report about the meeting which will be used in the court case.

## Costs

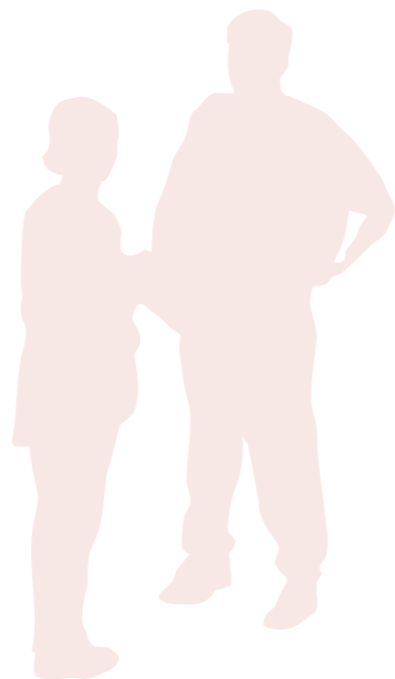
Each party is generally responsible for paying their own costs. You may need to share some costs. For example, if there is an independent children's lawyer or a family report. Sometimes the court may order that one party pay some or all of the other party's costs. This does not happen very often in children's cases.

Section 117 of the Act sets out the considerations where the court may order costs, because of a party's conduct. These include failure to obey court orders or directions such as answering questions or giving documents to the court.

If you are concerned about costs or are feeling pressured to settle to avoid costs, get legal advice.

See 'Enforcing orders about children' in 'Chapter eleven – Once an order is made' at page 52.

See 'Costs' in 'Chapter five – Property' at page 29.



## ▶ Chapter five – Property



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

Property includes **assets** owned individually, jointly (with one or more people), or by a family trust or family company. It may also include property that you or your ex-partner used to own, but has recently been sold or given away. It also includes property that was destroyed.

### Property may include:

- real estate (including the family home and/or investment property)
- cars, boats, caravans etc
- cash/bank accounts
- investments
- superannuation
- insurance policies
- shares
- jewellery
- furniture
- businesses
- any other assets.

The law has changed. From 1 March 2009, if you were in a de facto (including same-sex) relationship you are now able to use the Family Law Act to settle your property dispute.

Current de facto partners are also able to register their relationship with the Registrar of Births, Deaths and Marriages, under a new Victorian law, the *Relationships Act 2008*.

**Get legal advice.**

Decisions about property and spousal maintenance are guided by Part VIII (eight) and VIII B of the Act.

If your case is listed in the Federal Magistrates Court you may also have to get a copy of the Federal Magistrates Act. Both Acts can be seen at a law library (including Victoria Legal Aid's public library) or on the internet.

Section 80 of the Family Law Act sets out the property and spousal maintenance orders the court can make. It is only possible for the court to make orders within this list.

See Appendix 5.

### Time limits

If you are married you can apply for a property settlement and/or spousal maintenance at any time before your divorce. Once your divorce is final, you must **file** your property and/or spousal maintenance application within 12 months.

The court can extend the 12 month time limit, but will only do this if there is good reason. If 12 months has passed, you must get permission of the court to file your property and/or spousal maintenance application.

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Defacto (including same-sex) partners are now able to apply for a property settlement and/or spousal maintenance through the family law courts. Defacto former partners must file their property and/or spousal maintenance application within two years of the relationship ending.

## Interim orders

The courts also make **interim** property orders. Interim property orders can include:

- sole occupancy order – where you want to stay in the family home without your ex-partner
- urgent injunction – where you stop your ex-partner from selling or disposing of assets or ‘freezing’ money (stopping money being used) in a bank account or money about to be received from a pay-out of an insurance policy or superannuation
- periodic spousal maintenance – where you need the financial support of your ex-partner until a final property settlement can be reached.

For more information on interim orders See ‘Chapter four – Children’.

## Caveats

A caveat is a warning to a third **party** dealing with the land, letting them know that you have a financial interest in the land. To get a caveat you must satisfy the Registrar of Titles that your interest in the land should be protected. If you lodge a caveat incorrectly you may have to pay **costs**. Get legal advice first.

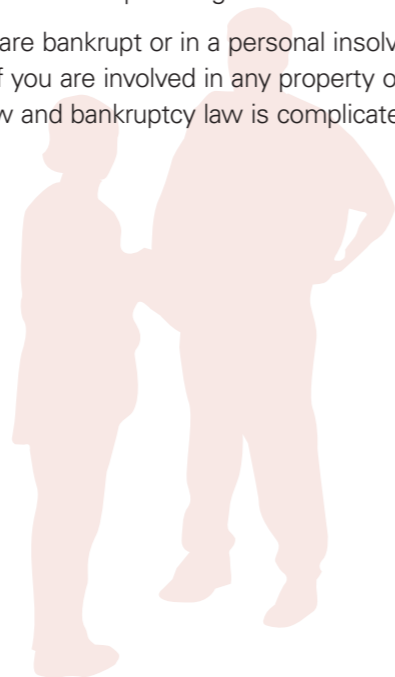
## Third parties

The courts can make orders and injunctions that affect third parties (those who are not part of a marriage, for example, banks or relatives). A court can make an order stopping a bank from selling a house. Orders can also be made which transfer responsibility for a debt from one partner to another. The third party must be **served** all documents, even if you and your ex-partner have agreed to sort things out in a particular way. This gives the third party the chance to be involved in the case. Third parties are now able to join proceedings regarding defacto former couples (including same-sex). Get legal advice.

## Bankruptcy

If you have a family law case and you go bankrupt, the family courts can deal with your bankruptcy. Bankruptcy can be dealt with at the same time as property or spousal maintenance. It doesn't matter if you are bankrupt at the start or become bankrupt during the case.

Tell the court and everyone involved in your case if you are bankrupt or in a personal insolvency agreement. You must also tell your bankruptcy trustee if you are involved in any property or spousal maintenance cases. The cross-over of family law and bankruptcy law is complicated. It is important that you get legal advice.



## Steps in a property case

There is no automatic 50/50 division of property when a marriage breaks down.

The court generally applies a four-step process.

1. Identify and value the property of the parties.
2. Take into account the contributions made by the parties to the property. (See Section 79 (4) (a) to (c) of the Act in Appendix five).
3. Consider the list of factors outlined in sections 75 (2) and 79 (d) to (g) of the Act in Appendix five.
4. Make sure the division is just and equitable (fair).

### Step 1 – Identify and value the property of the parties

Give the court a detailed list of all your property. This is usually done in a financial statement.

See the beginning of this chapter for the types of assets which may be included.

Collect all documents that prove the financial history of your marriage and your current circumstances. These can include group certificates, tax returns, bank statements, certificates of title, superannuation and insurance policies.

Once you have a list of property, calculate its value. It may be useful to get property valuations. You can get some idea of the value of furniture and cars by looking at prices for second-hand goods. If you cannot agree on the value, and the case goes to final trial, you must get sworn valuations by an independent assessor.

The court takes the market value of the property at the time when the case goes to court, not at the time of separation. When writing out your financial details make sure that they are accurate. You have to **swear** or **affirm** that they are correct. There can be serious problems later in your case if your financial statement is inaccurate, misleading or incomplete.

### Superannuation

Superannuation interests are treated as property in property settlements. You and your ex-partner can reach an agreement yourselves, away from the court. If this is not possible, the court decides how superannuation interests are split.

It is important that you get accurate information about the value of your and your ex-partner's superannuation funds. To do this, you need to fill out some forms. The forms are available from the court or by calling 1300 352 000. You can also download them from [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) along with other information about the superannuation laws.

More information about superannuation laws is available on the Commonwealth Attorney-General's Department website [www.ag.gov.au](http://www.ag.gov.au) and at [www.australianlawonline.com.au](http://www.australianlawonline.com.au)

See ‘Where to get help’.

**Note:** The law has changed concerning Commonwealth superannuation benefits and same-sex couples. Get legal advice.

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## Step 2 – Contributions towards the property

Once the property is identified and its value is worked out, the court can consider the contributions made by each party. Contributions means what has been offered or given to the property.

The court looks at the direct financial and indirect contributions to the property. Indirect contributions include things done to help the family, including any work as a homemaker or parent. For example, staying home caring for children is considered to be just as valuable as income.

Indirect contributions also include anything done to help get property or to maintain or improve it. For example, gardening or painting the house.

### Section 79(4) Alteration of property interests

#### Matters to be taken into account

In considering what property order (if any) should be made, the court takes into account:

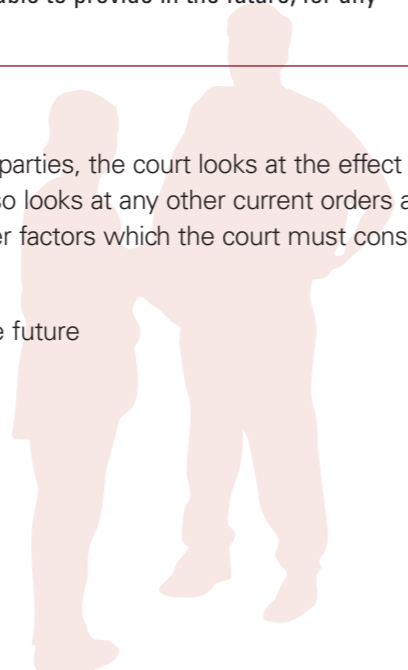
- (a) The financial contributions made by or on behalf of the husband, wife or child to the property including the buying, maintaining and improving of any property belonging to either or both parties. This includes property that was owned during the marriage but is no longer owned by the parties.
- (b) Any non-financial contributions made directly or indirectly by or on behalf of the husband, wife or child to any property. This includes buying, maintaining and improving that property whether it belongs to either or both parties. This also includes non-financial contributions made to property which was owned during the marriage but is no longer owned by the parties.
- (c) Any contribution made by the husband or wife to the welfare of the family, including being a home maker or parent.
- (d) The effect of any proposed order upon the amount of money either party to the marriage can earn.
- (e) The matters referred to in sub-section 75(2) if they are relevant.
- (f) Any other order made under the Act affecting the husband, wife or children of the marriage.
- (g) Any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide or might be liable to provide in the future, for any children of the marriage.

## Step 3 – Apply the law to your case

After taking into account the contributions made by the parties, the court looks at the effect of any proposed order on you and your ex-partner. The court also looks at any other current orders and if there is child support involved. There is also a list of other factors which the court must consider.

These include:

- how much you and the other person can earn in the future
- yours and the other person's age and health
- who cares for the children
- responsibility for supporting other people
- how long your relationship lasted
- child support
- any other factors affecting fairness.



It is important that you go through the relevant factors in sections 79(4) (d) to (g) and 75(2) of the Act and look at the factors that are relevant to your case.

See 'Contributions towards the property' in this chapter and Appendix five.

Think about whether your proposed orders are fair to both parties. Ask the court for what you want by making an **affidavit** that covers the law that relates to your case.

See 'Chapter seven – Affidavits'.

## Step 4 – Are the orders just and equitable?

Once you have completed the three steps, consider if the orders you are asking for are fair for both of you. The court must make sure that orders are just and equitable (fair) for all parties.

### Spousal maintenance

Spousal maintenance is money paid by people to their ex-partners when they cannot support themselves. Spousal maintenance is not an automatic right. The court considers the need of the **applicant** and the **respondent's** ability to pay.

See Section 72 in Appendix five.

There are a number of other sections under Part VIII (eight) and VIII B of the Act that may be relevant to this type of case. You should also look at Rule 4.15 of the Family Law Rules. This rule sets out the **evidence** each party must bring to the court in spousal maintenance cases. Most law libraries have a copy of the Act and Rules or you can see these on the courts' website.

See 'Where to get help'.

To see examples of general spousal maintenance orders and property orders (interim and final), go to Appendix six.

### Costs

Sometimes the court may order that one party pay some or all of the other party's costs. This might be for travel or lost wages. This does not happen very often. See Section 117 of the Act for when this might happen.

See 'Costs' in 'Chapter four – Children' at page 24.

# How to run your family law case

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## ▶ Chapter six – Preparing for a trial or hearing



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

If you and your ex-partner cannot sort out your dispute, the court can make a decision. This decision may be one neither of you is happy with. The final part of a court case in the Family Court is called the 'trial' or 'conclusion hearing'. In the Federal Magistrates Court this is called the 'hearing'.

### Work out the issues in dispute

The first thing to do is work out the legal issues that you and your ex-partner cannot agree on.

Be clear about what you want to get. Work out what the other **party** wants. You need to identify the differences between what you want and what they want.

In working out the differences, make a list of the strengths and weaknesses of your case. Note down your response to any weak points in the other side's case. Make sure that you prepare thoroughly before your case goes to court.

When your case goes to court every detail of what you say can be questioned or challenged. Do not assume that something will go unchallenged just because it seems obvious and right to you. Have your **evidence** ready to support your case.

### Gather evidence in support of your case

The court can only look at evidence that is relevant to the case and 'admissible' (able to be used in court). Evidence is relevant if it supports a party's argument, and/or helps to go against the other side of the argument.

Be objective about the evidence required. The evidence must be directly linked to your argument. Do not use unnecessary evidence which may be distracting. At the same time, you must keep in mind your duty to **disclose** material relevant to the issues in dispute.

Sometimes evidence that might seem relevant cannot be used in court. See 'Some important rules about evidence' in this chapter.

### Division 12A cases

If your case is being run using Division 12A, the **judge** or **federal magistrate** decides:

- the evidence to be used and how the court uses it
- the documents to be **filed** or **served** by either party
- the witnesses to be used, the issues that the witnesses can give evidence on and when they can do so
- the order of questions to be asked and how they are asked. The case may run as a discussion between everyone involved or more formally (for example, using cross-examination)
- whether **subpoenas** are to be issued, the documents (or **witnesses**) to be subpoenaed and the date for when the parties can see subpoenaed documents.

In Division 12A cases you normally give evidence by an **affidavit**. Expert witnesses also give their evidence by affidavit in most cases. Evidence by other witnesses are given in person or by telephone or video-link unless the judge says not to.

See 'Division 12A' in 'Chapter three – Applying to a court'.

While some of the rules of evidence may not be used in a Division 12A case, it is important to know about the rules. The court may use some of these rules. This is usually decided on the first day of your court case or during a 'call over' (a pre-trial court meeting).

It may strengthen your case if you use the evidence rules. For example, the rules stop hearsay evidence being used, where someone tells the court about something they heard (but did not see for themselves). Get legal advice.

See 'Some important rules about evidence' in this chapter.

If you wish to use the rules of evidence in your Division 12A case, you need to ask for this on the first day. Section 69ZT(3) allows the court to use the *Evidence Act 1958* if the situation is exceptional and the court has taken into account:

- the importance of the evidence
- the type of situation the case is about
- how strongly the evidence might prove that something is correct
- whether the court can adjourn (delay) the hearing to make another order.

Get legal advice.

Make sure you are prepared for your first day in court. Have a list of witnesses and evidence you would like to use, and any subpoenas you may need. List in detail the orders you seek and the reasons you need the witnesses and evidence to support your case.

### How to get evidence

You may be able to get evidence to support your arguments from:

- witnesses who can say that your version of events is true
- written documents which support what you say
- reports from professionals
- financial records (for example, bank statements, copies of invoices, bills, receipts)
- letters or other correspondence
- affidavits
- photos or videos that can support what you say.

### What if there is no independent evidence available?

Often there is no independent evidence or witnesses to support your case. This is often the case with family violence.

If you do not have any independent evidence, you can still go ahead with your case. In this situation, the evidence given to the court is your story written in an affidavit.

If this is the case, it is important that the court believes you are giving truthful and accurate evidence. Do not exaggerate details to try to make your case seem more impressive. Stick to the facts.

# How to run your family law case

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## What if someone else has the evidence I need?

If another person, such as a family member, friend or work colleague, saw something, you can ask that person to tell the court. They do this by making an affidavit. The person who makes the affidavit is known as the 'witness'. If the other party disagrees with the affidavit, the witness may have to come to court. If the witness does not want to do this, you may issue a subpoena. A subpoena compels (makes) them come to court to answer questions about their affidavit.

See 'Chapter eight – Disclosure and subpoenas'.

## Some important rules about evidence

Not all evidence that is relevant can be shown to the court. The rules about evidence are complicated. Evidence that cannot be used in court is called 'inadmissible evidence'. There are the common types of inadmissible evidence:

### Hearsay evidence

Hearsay is something that you have heard from someone else. You cannot use hearsay evidence in court. So, for example, in your evidence you cannot talk about a conversation between your sister and ex-partner, which happened when you were not there.

There are exceptions to this rule. A conversation might be admitted to work out the time and place of an event or why a person acted in such a way. Get legal advice.

If you try to use hearsay evidence, for example in a Division 12A case, the other party may challenge its use. To avoid this you can call the person who made the statement as a witness.

### Opinion evidence

Usually witnesses can only give evidence about things they know as fact. So, a witness can give evidence of what they saw but not what they think about it. The exception to this is the evidence of an expert, who has qualifications or experience that they use to give an opinion. An example would include a psychologist or forensics expert.

### Character evidence

Usually evidence used to harm a witness is not admissible. If a party uses evidence to show their good character, you may be allowed to use evidence to show otherwise.

### Past behaviour

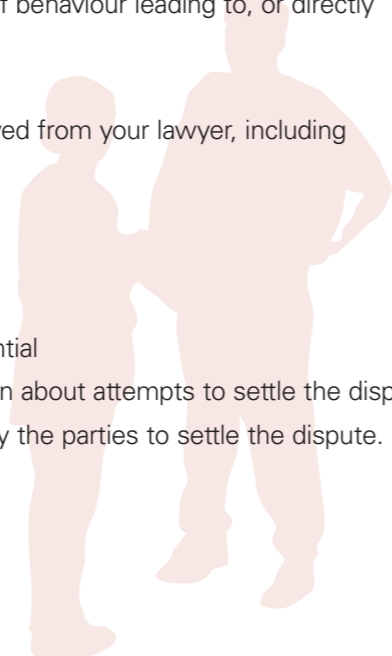
How a witness behaved in the past, if not related to the current case, is not usually admissible. However, you may use evidence that shows a pattern of behaviour leading to, or directly connected with your case. Get legal advice.

### Legally privileged information

Confidential information that you have given to or received from your lawyer, including negotiations to settle the case, are not admissible.

Confidential information can be used:

- when the parties agree to the evidence being used
- where most of the evidence has already been used
- when the information was not meant to be confidential
- where the evidence contradicts other evidence given about attempts to settle the dispute
- where the case is to enforce an agreement made by the parties to settle the dispute.



## Expert witnesses

Reports from professionals (expert witnesses) should only be used when their evidence is necessary to sort out an issue in dispute.

Expert witnesses must be:

- given a letter outlining the issues you would like them to report upon
- used by both parties to make one report, if practicable
- informed of their obligations.

If the parties use two expert witnesses, both reports must be filed with the court.

See Part 5 of the Rules in Appendix two.

## Keep records

It is very important to keep accurate, detailed and well-organised records of anything relevant to your case. It may be hard to decide what will be relevant, so keep more rather than less information. If your case goes to court, many of your records become evidence.

### What information to keep

- marriage certificate\* and children's birth certificates\*
- court documents (noting the date you got them)
- a list or diary of important dates, including:
  - date of when you started living together or were married
  - dates of birth of children
  - dates of purchase or sales of goods or real estate
  - date of separation
  - court dates, hearings when documents are due to be filed etc
  - dates of significant events, such as contact taking place or failing to take place
  - dates and details of violence or threats
  - dates and details of conversations that may affect your case
- names, addresses and contact details of important witnesses you may need to call
- copies of bank statements, invoices, receipts, policies and other documents about property
- copies of correspondence
- photos, videos, emails etc.

Add important items and events to this list or diary as they happen.

\* If these were issued overseas, and a certificate is in a language other than English, you need to have the certificate translated.

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## ▶ Chapter seven – Affidavits



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

In most family law cases, the main way of giving **evidence** to the court is by a document called an **affidavit**. An affidavit is a written statement setting out the facts of a case in your own words. The affidavit needs to be signed in front of a qualified person. The person writing the affidavit is called the **deponent**.

Generally, when you file an application or a response with the court, you need to attach one or more supporting affidavits. This is done to help **parties** prepare their case. It also means less surprises in the other side's case.

The law about preparing and using affidavits in the Family Court is in the Family Law Act and the Rules made under the Act. For cases in the Federal Magistrates Court see the Federal Magistrates Act and the Rules made under that Act.

The Family Court and Federal Magistrates Court have affidavit forms. You can download these from [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or you can call the court at 1300 352 000. The court will post them out to you.

You may need to read the practice directions made by each court. Practice directions are court guidelines to help cases move through the court quickly. Because practice directions change, check them from time to time.

In the Family Court evidence must be given by affidavit unless the court orders otherwise. In the Federal Magistrates Court evidence can be given in person or by affidavit. The **judge** or **federal magistrate** decides how your evidence is given. Both courts usually require an affidavit.

### How an affidavit is used

Your affidavit should include all the evidence you use at the hearing. There are slight differences between preparing an affidavit for an **interim** hearing and a final hearing.

In an interim hearing, the court is most likely to consider the affidavit and arguments from each party about the main issues of their case. The process of cross-examination is rare at an interim hearing.

At the final hearing, each party's evidence is looked at in more detail. You and your **witnesses** may be cross-examined on the contents of affidavits. You can also cross-examine the other party and witnesses on the contents of their affidavits. The processes of cross-examination and re-examination may not be used in Division 12A cases unless the judge or federal magistrate decides for this to happen.

It is unlikely that you will be allowed to give oral (spoken) evidence at a final hearing or trial about something you have not included in an affidavit. The reason is that if one party introduces new material on the day, the other party may be disadvantaged. This is because the other party did not have time to prepare material to cover the issues raised by the new evidence.

### How to prepare an affidavit

#### Facts you know about

An affidavit is made up of a series of short, numbered statements. Each statement should follow on logically from the one before. Each statement should set out a fact relevant to the case. It is important to know the difference between a fact and an opinion as you can only use facts that are known to you, not what you think about something. For example, you can give evidence about something if you saw it happen, but not if you just think something happened. This includes not putting in information told to you by someone else.

See 'Some important rules about evidence' in 'Chapter six – Preparing for a trial or hearing'.

If you need to use another person's evidence, you should put this in an affidavit for them to **swear** or **affirm**.

#### The statement must be true

If you make a statement in an affidavit that you know is not true, you commit perjury. Perjury is a criminal offence. If you make an untrue statement, either knowing it is not true, or without properly checking if it is true, you damage your credibility before the court. Credibility means your reputation for telling the truth and being trustworthy. Being considered not credible is bad for your case and can destroy your case in some instances.

You must also be ordered to pay some or all of the other party's **costs** if you knowingly make a false statement or **allegation** during a court case.

#### Your statement must be relevant to the issues in dispute

Keep your affidavit short and to the point. The affidavit should be about the issues in your case. If it is not, you risk annoying the judge or federal magistrate. This may affect your credibility overall. You can be ordered to pay costs if the other **party** has to challenge irrelevant or offensive statements in your affidavit.

On the other hand, do not keep out relevant information – you may not get the opportunity to add it in later, and it may be important to your case. Also, leaving something out may damage your credibility if it affects the accuracy of your affidavit. Get legal advice.

### Structure of an affidavit

An affidavit generally has a cover sheet, a body (where you write your statement) and the 'jurat clause' (where the affidavit is signed before a witness). The courts have affidavit forms for you to use. You can download these from [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or ask the court to send these to you. Call 1300 352 000.

The cover sheet includes:

- a header that shows which court is dealing with the case, a file number for your case, the court registry and date the case started, the hearing date and the hearing time
- names and addresses of the parties in the case
- what the case is about
- a statement saying which party the document is being filed for.

The body of the affidavit identifies the deponent (the person signing the affidavit) by name, and their address and job. It also says if the person swears on oath or affirms the contents.

When you swear on oath you swear on a Bible, Koran or other religious book that something is true. If you do not want to do this you can make a statement of affirmation, where you give your word that something is the truth.

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The body of the affidavit includes the numbered statements setting out all the relevant facts. It can be long or short.

The jurat clause comes at the end of the numbered paragraphs. Here the deponent swears on oath or affirms that the content is truthful in front of a qualified witness.

The usual jurat clause looks like this:

'SWORN by the deponent at [place] the \_\_\_ day of \_\_\_\_\_ 200 \_\_ before me:  
[the qualified witness signs and inserts his or her details]'

If the deponent is affirming rather than swearing the affidavit, the word 'AFFIRMED' is used instead. If you affirm your first affidavit you should affirm any affidavits you make later on.

Sometimes a special jurat clause is needed. For example, where the witness is sight impaired, cannot read or write, or cannot speak English. To find a list of people who may witness affidavits, and the different jurat clauses to use, go to the Victorian Department of Justice website at [www.justice.vic.gov.au](http://www.justice.vic.gov.au)

## Annexures

Annexures are documents which support your application and are attached to your affidavit. Examples of supporting documents could include reports, letters or photos. Annexures are sometimes called 'exhibits'.

If there are annexures, the person witnessing the affidavit must read or show these to the person who is making the affidavit. The jurat clause needs to be changed to show this has been done.

There must also be a note on each annexure, signed by the person who witnesses the affidavit, identifying the annexure in the same way it is referred to in the affidavit. For example:

'This is the annexure marked with 'JB1' produced and shown to Jill Bloggs at the time of swearing her affidavit this 15th day of May 200 \_\_ '.

**Tip:** Once the documents are complete you must sign and date every page. Sign the originals in a blue pen so you can tell the original from the copies.

Read the Family Law Rules at 15.12 for rules about annexures including page numbering, indexing, cover sheets and how thick annexures can be.

## Contents of an affidavit

The contents of an affidavit will depend on what kind of case it is.

### Children's issues

The Family Court has an affidavit that must be used in interim parenting order applications and which may also be used for applications for **final orders**. This format may also be useful for applications in the Federal Magistrates Court. The form is divided into the following parts:

- Parts A – C set out who the parties are, what the relationship to the other party is and gives details of the children
- Part D sets out past and present facts and arrangements and future proposals under the headings 'housing', 'supervision', 'the time the child spends and/or communicates with the other party', 'financial support', 'health' and 'education'
- Part E sets out the individual needs of each child

- Part F deals with health and other issues affecting those who will have the care of the children
- Part G deals with other relevant issues not included elsewhere
- Part H sets out the proposals for the child spending time with and/or communicating with the other party
- Part I contains the jurat clause (signature of **applicant** and approved witness) described earlier.

The information in each section of the affidavit must be relevant to the orders you are seeking.

In completing each section and your application, especially Part G, you need to keep the court's powers and duties in mind.

See Section 60CC (2) and (3) of the Act in Appendix three.

## Writing your affidavit

Your affidavit would start:

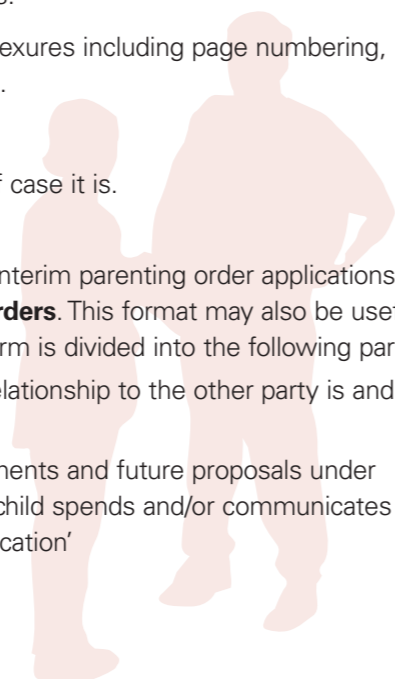
'I, [your full name] of [your full address] in the State of [name the state you live in], [insert your occupation], make oath and say/affirm:'

It might then include general background information.

1. I am the wife/husband in these proceedings.
2. I was born in Melbourne on 1st April 1960, and am now \_\_\_ years old. I am in good health.
3. The wife/husband was born in Ballarat on 10th June 1963 and s/he is in good health.
4. The wife/husband and I started living together in approximately June 1985.
5. We were married at St Albans on 20th December 1990 (OR: We have never been married).
6. There are two children of the marriage (relationship): Samuel Ben Johnson, aged 12, born at St Albans on 29th November 19\_\_\_, and Susan Mary Johnson aged 10 years, born at St Albans on 11th November 19\_\_\_.
7. I also have a son, Richard Gore, aged 15, born in Hobart, Tasmania in 19\_\_\_. Richard is in good health and currently lives during term-time with his mother/father in Hobart where he attends the Private Boys School. He lives with me during school holidays.
8. The wife/husband and I separated on 1st January 2000, at which time the wife/husband moved to \_\_\_\_\_ her/his present address. I believe she/he currently lives in a de facto relationship, but I have no details of that relationship.
9. The wife/husband is employed full time as an [occupation] by Company Pty Ltd. I am employed full time as an [occupation] by Partnership and Associates.

## Pre-separation history

- Give general information such as who was working, who was not working, and who has looked after the children, what the arrangements were for schooling, kindergarten, leisure and sporting activities.
- Write about any difficulties. For example, if there was family violence, outline when it started and give examples. If the police or other services were involved, include this information. If the family violence was non-physical, give examples of the form of violence.



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- Explain any other needs the children have, such as medical treatment and other special needs.
- Mention any other issues that came up during the marriage including drug and alcohol use, mental health issues and any other things about the children's wellbeing.

## Separation and current arrangements

- Give details about separation – who moved out and what arrangements were made for the children at that time.
- Explain who the children live with now, who else lives in the home with them and what role other people play in the children's care and supervision. If there is a current parenting plan, include this information.
- Describe how the children spend time with and communicate with the other parent, and for how long.
- Include the children's schooling (place and year level), and kindergarten details and who picks up and drops off the children.
- Address other issues about the children including health, if child support is being paid and the relationship of the children with other people.
- Detail any other court cases that have happened.
- Give specific examples of issues that have come up during the separation – family violence or problems with handover. For example, if the other parent has cancelled seeing the children or has not turned up for handover. Include any continued drug or alcohol use or mental health issues that have affected the other parent's ability to look after the children.

## Facts that link to the relevant law

In this part of the affidavit try to link the facts of your case to the relevant sections of the Act. For example, set out what is in the best interests of the children. Make a checklist of the factors listed in Section 60CC of the Act and set out the facts that show your ability to look after the children. See 'Chapter four – Children'. Do not say things you cannot support later. If the court finds that you have made a false statement during a case you may be made to pay some or all of the other party's costs.

## Parental responsibility

The court assumes that both parents have equal shared parental responsibility when it is making parenting orders. Equal shared parental responsibility means that parents have to make a genuine effort to make decisions together about major long-term issues affecting the children. They do not have to consult each other about other decisions, for example, what the child eats or wears.

The court does not assume equal shared parental responsibility if there is child abuse or family violence. This includes child abuse or family violence towards a child who is a member of the parent's family. For example, a half or step-sibling. The court will also not make this assumption if it is not in the best interests of the children to do so.

You need to say in your affidavit if you:

- Do not want equal shared parental responsibility. You must have reasons to ask this. You should outline this in your affidavit.
- Want all long-term issues to be decided together.
- Want separate power for some decisions (except for major long-term decisions). For example, 'the father has sole parental responsibility for the religious upbringing of the children but that the parties otherwise have equal shared parental responsibility for the children'.

## Parenting time arrangements

If the court finds that there is equal shared parental responsibility, it must then look at whether the children spending equal time with each parent is in the best interests of the children and practicable. If it is not, the court must then look at whether it is in the children's best interests and practicable for them to spend substantial and significant time with each parent.

See 'The best interests of the children in Section 60CC' in 'Chapter four – Children'.

Substantial and significant time has a legal meaning. It includes weekdays, weekends, holidays, being involved in the children's daily routines and spending special days or events together. If this is found to be not practical or not in the best interests of the children, the court considers other parenting time arrangements.

Say in your affidavit how much parenting time you would like for you and the other party. This may be equal time, substantial and significant time or another arrangement. Say why this is in the best interests of the child and practical. Do this by referring to the factors in Section 60CC that are relevant to your case.

See 'Chapter four – Children'.

## Changing a parenting order, communicating and handling disagreements

You can say in your affidavit how you and your ex-partner can change a parenting order if you ever need to. This may include:

- applying to the court to make a change
- going to family dispute resolution if you are having disagreements about the order
- making a parenting plan to change the order.

You should include the steps you would like both parties to take in your affidavit to change a parenting order or handle disagreements.

If you do not want your parenting order to be changed later by a parenting plan, include this in your affidavit. You must, however, include exceptional circumstances to support this. For example, fearing being pressured or threatened by the other party.

See 'Parenting plans' in 'Chapter one – Alternatives to going to court'.

You can also say how you want to communicate with the other party about the order. For example, by telephone, email or text messaging.

## Proposed arrangements

This is where you say what you want the court to agree to and include any other factors relevant to the care of the children. You need to cover the following things:

**Housing** – where the children would live, what type of home it is and who else would live there.

**Time with other parent** – if you want an order that the child live with you, what time and/or communication do you propose that each child has with the other party? Include travel arrangements and handover arrangements if relevant. If you propose that any time or communication be supervised, name a supervisor and explain that person's relationship to the children. Say if the supervisor has agreed to do this.

Think about what will happen if you are **not** successful in your application for the child to live with you. Or what will happen if you do **not** want an order for the child to live with you. What are your proposals for each child to spend time with and/or communicate with you? Include travel and handover arrangements.

**Supervision** – the kindergarten or school the children will go to, and any other people besides the parents who would be involved in supervision.

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**Financial support** – what financial resources you can use to support the children. For example, money from work, benefits or child support.

**Health** – health issues of the parties or the children and any treatment which may be needed. To show this, write down any treatment, counselling or medication, including from medical practitioners, school counsellors, therapists, social workers, child psychologists or child psychiatrists for the last two years and why future treatment may be needed.

**Education** – details of the pre-school, kindergarten, school and day care each child will go to.

**Individual needs of the child** – special characteristics or needs of the children. For example, a need to maintain a connection with any ethnic, racial or religious lifestyle, culture or tradition.

**Care of the children** – any factors that affect your or the other party's ability to provide a safe physical and emotional environment (including any child abuse or family violence). Include any involvement by a State welfare department or police with the child. If the parties or their partners have other children under the age of 18, do the same.

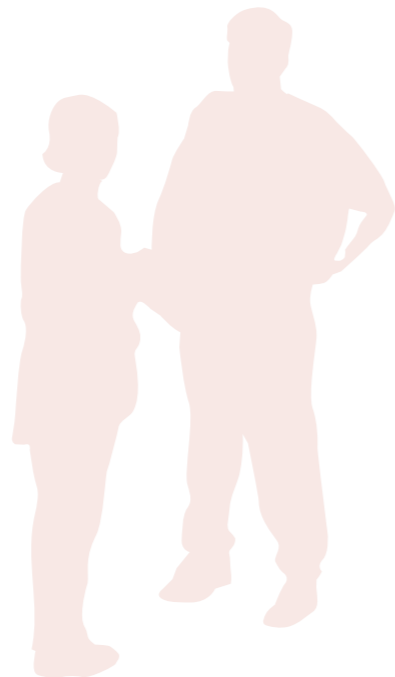
**Other issues** – give any other relevant facts in support of the orders you seek. Consider the factors set out in Section 60CC (2) and (3) of the Act. You must address all of the factors in this section that are relevant to your application.

See 'Chapter four – Children'.

## Property issues

An affidavit in a property application includes the following issues:

- the length of the relationship
- what you owned when you started the relationship
- direct and indirect financial contributions each party made to the marriage.  
(See 'Contributions towards the property' in 'Chapter five – Property')
- savings, gifts and inheritances, and how these were used
- how much money you will earn in the future
- any child support payments being made
- the list of factors under Section 75(2) of the Family Law Act (See 'Chapter five – Property')
- any problems such as gambling or family violence that may have affected how much money the parties earned
- any other relevant issues.



## Chapter eight – Disclosure and subpoenas



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

When preparing for your case, you may need to use **evidence** that you do not have. Someone else may have it. You may need the evidence to support your case or challenge the other person's case. You can get this using a **subpoena**.

A subpoena is a written order from the court that tells a person (or a representative of an organisation) to appear before the court or to send documents.

You also need to send information to the other parties in your case. This is known as **disclosure** or discovery. You must begin sending information before you put in your application for court orders. This obligation continues until **final orders** are made.

If your case is run using Division 12A, then most rules of evidence do not apply, unless the **judge** or **federal magistrate** says they should. The judge or federal magistrate also decides who gives evidence, how it is provided (for example, in an **affidavit** or by producing a document or orally) and how long the written evidence should be. The judge or federal magistrate decides this usually on the first day in court. Be prepared.

You can prepare by thinking about what evidence you need, including **witnesses**, to support the orders you want. Be ready on the first day of your case with a list of witnesses and documents you wish to use. List how many subpoenas you need for which witnesses and documents. Also, how you would like the witnesses to give evidence. Be prepared to explain to the judge or federal magistrate why you want to use this evidence.

See Section 69ZX for the orders and directions that the court can make.

See 'Division 12A' in 'Chapter three – Applying to a court'.

### Duty of disclosure

You and the other people involved in your case must make available all the information relevant to the case. This must be done during the time period that the court requires. If you do not do this you could be ordered to pay financial **costs**, your case could be delayed and you could be found in contempt of court. Contempt of court is when the court finds you have interfered with or ignored the rules of the court. This is serious and is against the law.

You may also be stopped from using information in your case if you have not disclosed it.

'Information' includes, but is not limited to, documents, and information that may support the other **party's** case.

The information that you have to disclose is to do with the issues in dispute, so it is important that you write these out clearly. The type of information you must give depends on what kind of case it is. In financial cases, the list of information you need to disclose is very detailed.

See 'Disclosure and exchange of correspondence' in Appendix two.

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## Disclosure in the Family Court

The Family Law Rules say that parties have an ongoing duty to **disclose** information relevant to the dispute. The process of making documents available for inspection by the parties in your case is called discovery. For example, in property cases you must provide a list of **assets**, income and liabilities and a list of any relevant documents you have.

See the Family Law Rules in Appendix two to find out what sort of things you have to disclose.

If your case has not settled (come to agreement) and you are preparing for trial, check that your disclosure statements are still current and complete. You also need to promise the court that you have disclosed all relevant documents.

Disclosing that a document exists does not always mean that you must supply copies of the document. For example, if you have seen a lawyer about your case and have a letter setting out the lawyer's advice, you may need to say you have the letter. However you may be able to claim **privilege** against providing a copy of the letter. The privilege against producing information is because it is confidential communication between you and your lawyer.

See 'Some important rules about evidence' in 'Chapter six – Preparing for a trial or hearing'.

### Asking to see a document

You can write to another party asking them to produce a disclosed document. The other party must post or make the document available within 21 days.

If someone who is not involved in the case has a document, you must first:

- **serve** a formal notice on the party or parties to the proceedings
- serve a formal notice seven days later, on the person who holds the document.

See Appendix one for a list of forms. The person who has the document must let you see it within a further seven days, unless there is an objection.

A party to proceedings must object (formally disagree) within seven days of being served with your notice. The person with the document also has seven days to object. If a party or third party objects to producing a document, you can apply to the court for an order that the document be produced.

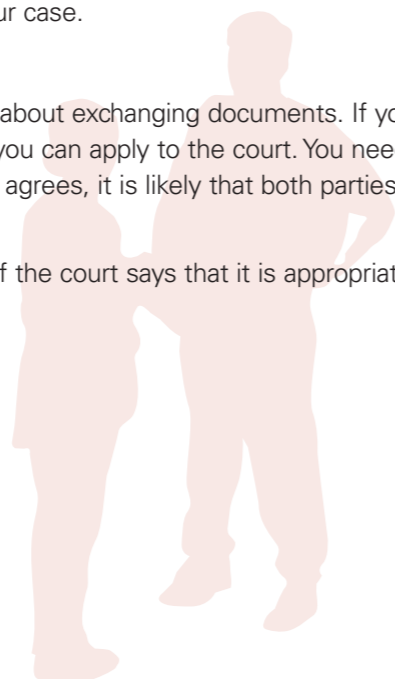
If a document is produced, you may take a copy after you pay the reasonable costs of copying.

**Important note:** You can only use the document for your case.

## Disclosure in the Federal Magistrates Court

You and the other party can agree between yourselves about exchanging documents. If you cannot agree with the other parties about documents, you can apply to the court. You need to satisfy the court that this step is necessary. If the court agrees, it is likely that both parties have to provide an affidavit about the documents.

You can only get an order about producing documents if the court says that it is appropriate in the administration of justice.



## Subpoenas

A subpoena is a written order from the court that tells a person to:

- give evidence
- produce documents, records or things
- produce documents and give evidence.

To get a subpoena, you need to apply to the court for one to be issued. See Appendix one. You need to convince the court that the subpoena is needed, and say what kind of subpoena you need.

Attach to the application form a letter that explains why you want the subpoena. If you are representing yourself in the Family Court, you must get permission from a **registrar** before applying to the court for a subpoena to be issued.

You can get up to three subpoenas in the Family Court and up to five in the Federal Magistrates Court.

### Documents and records

If you are trying to see documents, you need to say in the subpoena which documents you want.

You can only ask for things that already exist, and you cannot ask for 'everything you have about X' or 'every relevant thing you have about X'. You must say what is relevant to the issue(s) in dispute. For example, 'every relevant document about X's learning disability'.

In most cases you should allow at least seven days to get the documents. If you want to get documents more quickly you need to show the court that the other party has agreed to provide them with less notice.

### Tips

1. To avoid unnecessary costs, talk to the person and find out what documents they have and what it will cost to produce them. For example, the costs of photocopying. Make sure your subpoena only includes what is essential to the issues in dispute.
2. Make sure the date for delivery of documents is earlier than the date of the court hearing. This is so you can see the documents and prepare the relevant part of your case.

There may be a small number of documents that do not need to be disclosed due to privilege. See 'Some important rules about evidence' in 'Chapter six – Preparing for a trial or hearing'. Even if privilege applies to a document, you must still list it in the affidavit of documents.

### Serving a subpoena

A subpoena must be personally served on an individual. It cannot be served on an organisation. For example, if you wish to subpoena police records, you cannot issue a subpoena on the Victorian Police. In this situation, you must issue your subpoena to a member of the police force. For example, the officer in charge of police records.

The person issuing the subpoena pays for all reasonable costs of:

- Finding, gathering, copying and delivering the documents to court.
- Getting the witness to court to give evidence. For example, transport or petrol costs. This is called 'conduct money'. You must get a money order or bank cheque for the conduct money.
- If the witness is a professional, for example, doctor, counsellor or school teacher, the person issuing the subpoena may have to pay their professional costs on an hourly basis.

Once you have issued a subpoena, you must tell the other party or parties in writing and give them a copy of the subpoena. Once the subpoena is served, an affidavit of **service** needs to be completed and **filed**. This is an affidavit which tells the court that the subpoena has been served.

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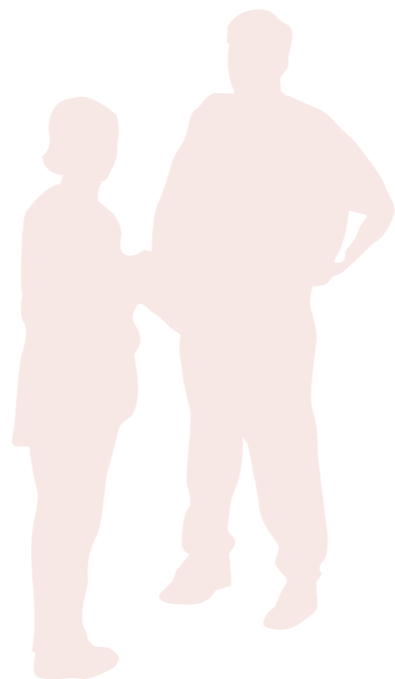
## Witnesses

If you have filed affidavits by witnesses who support your case, then the other party may wish to cross-examine those witnesses.

See 'Cross-examination' in 'Chapter nine – The trial or hearing'.

If the other party or parties wants to cross-examine, they must give you written notice that the witness must go to the court. If you get this kind of notice it is your responsibility to make sure that person comes to court. It is also your responsibility to tell the other party, by letter, about the witnesses you want to cross-examine.

If the witness cannot come to court unless ordered to, then you need to ask the court to issue a subpoena. Expert witnesses or witnesses appearing on behalf of an organisation almost always need a subpoena so they can recover their costs from you for coming to court. It also protects them from **allegations** of unlawful disclosure of information. Serve the subpoena in plenty of time so the witness can organise to be there.



## ▶ Chapter nine – The trial or hearing



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

**Note:** The following information does not apply to Division 12A cases, unless the **judge** or **federal magistrate** has said so. It is important, however, that you understand how a final trial or hearing is run because the judge or federal magistrate may use these processes.

### Before the trial or hearing

Trials are held in the Family Court and final hearings are held in the Federal Magistrates Court. In this chapter the word 'trial' is used but the information is about what happens in both the Family Court and Federal Magistrates Court.

**Note:** The Family Court and Federal Magistrates Court will be merging soon. Check with the court.

You get a date for final trial after all **interim** applications have been finalised and you have participated in each pre-trial procedure.

See 'The court process' in 'Chapter three – Applying to a court'.

Before the trial, make time to go to the court and watch how another case works. Ask at the counter and get permission from the court officer.

### Opening address

An opening address is a statement made to the court at the beginning of a court case.

The **applicant** and **respondent** (and **independent children's lawyer**, if there is one) may have an opportunity to:

- say what orders they wish the court to make
- briefly outline the evidence that supports their application or response.

In a Division 12A case, this may be less formal but still requires great detail. Be prepared on the first day to give the court:

- a list of the issues of the case. For example, a religious or education issue, any **allegations** of family violence, child abuse, the views of older children
- the orders you want in detail
- the evidence you wish to use. For example, **witnesses** and documents and **subpoenas** you might need.

This process tells the court what is in dispute between the **parties** and the **evidence** each party would like to use.

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## Evidence in chief

The evidence you wish the court to consider is set out in your **affidavit**. This is known as 'evidence in chief'. Examination in chief is when the first witness is questioned at the beginning of the court case. Witnesses are questioned about the contents of the affidavit they have made. You can only give evidence in person, without an affidavit, in limited circumstances.

If things have changed since you first prepared your affidavit, you may need to prepare an updated one. Do this at least 14 days before the final trial and **serve** it on all other parties. The Family Court generally allows only one affidavit per witness. If things change after the new affidavit is served, you may be allowed to give this evidence yourself.

## Cross-examination

Cross-examination is where you get to ask the other party about their evidence. It can show the court that the other party's story is wrong or weak and that yours is right.

To challenge the evidence in an affidavit, you need to give the other party notice that their witness must come to court for cross-examination. Do this by letter, once the date for trial has been set. Ask early.

### Preparing your cross-examination

You need to be well prepared to cross-examine. Read all the affidavit material – for your own case and for the other party's case.

- List the areas of weakness, and differences between each affidavit and ask about these issues during cross-examination.
- If you have evidence that proves the other party's statements are wrong, you must put (tell) that evidence to the witness. If you do not question or tell them about this, you are not allowed to use this evidence at all.
- Write down the main points you want to make. (See the Act and rules about cross-examination).
- Write a list of questions you want to ask a witness so you do not forget anything and use this to help you stay on track.

You are allowed to ask leading questions (questions in which the answer is suggested). For example, 'You were late to pick up Peter, weren't you?'. You cannot ask questions that are offensive or abusive.

### Example of cross-examination

Ms Jones is being cross-examined about not letting Mr Jones see their son Peter. The parties had previously made **consent orders** where they both agreed to this. Ms Jones said in her affidavit that Mr Jones made no contact with Peter. She implied that he does not care about him. Mr Jones says that Ms Jones stops him seeing Peter. He has copies of his telephone records showing calls to Ms Jones' number. In cross-examining Ms Jones, he might say:

- Q. Now on 6 January 2008, you went to the Family Court at Melbourne, didn't you?
- Q. You had a lawyer representing you on that day, isn't that right?
- Q. It is correct that we signed consent orders written by your lawyer, isn't it?
- Q. Before signing the consent orders, you read them carefully didn't you?
- Q. It is also true that you were given a copy of the consent orders, isn't it?
- Q. Would you agree that the orders clearly state that Peter is allowed to get a call from me each Wednesday between the hours of 6.30 pm and 7.00 pm?
- Q. It is correct that your home number is 9123 4567, isn't it?

- Q. Since the orders were made, it is true that I have called your home and asked to speak to Peter each Wednesday at 6.30 pm, isn't it?
- Q. It is also true that on each and every occasion that I have called to speak to Peter, you have answered the telephone, isn't it?
- Q. It is true, isn't it, that as soon as you hear my voice you hang up the telephone?

If Ms Jones does not agree that the phone calls took place, Mr Jones can tender (show) the phone records. However, the phone records only show that a phone call was made from Mr Jones's phone to Ms Jones's phone. The records do not prove that it was Ms Jones who answered the call or that she hung up the phone. She might say that Peter took the calls and hung up.

If that is the case, the information should have been in her affidavit. Not including this information may affect her credibility.

## Re-examination

After witnesses have been cross-examined, they can explain anything that came up during re-examination. The witness cannot give the court new information or go back to earlier evidence during re-examination. In some circumstances, witnesses may bring in new evidence. However, they must ask the court first.

## Closing address

The closing address happens at the end of the case. The applicant and respondent (and independent children's lawyer, if there is one) can go through the main points of their case.

The parties should emphasise the positive aspects of their case and say why the court should make the orders they want. You can use this time to tell the court case law and sections of the Act that relate to your case. Case law is law made from specific cases that have gone before the courts. Remember that the court may or may not follow any particular case law.

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## ▶ Chapter ten – On the day



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

### Before you go into court

- Arrive at least 15 minutes early and find your way to the right court.
- Go into the court room and tell the court officer you have arrived. The court officer is usually inside the court before the case starts. They wear a navy blue suit with the Australian coat of arms on it. If the courtroom is locked or empty go to the information counter and tell them you have arrived.
- **Tell the court well before the first day of your court case if you have experienced family violence or feel unsafe.**
- Turn off your mobile phone or pager.

### Going into court

Acknowledge the **judge/federal magistrate/registrars** by nodding your head to them as you enter the courtroom.

When your case is called, go to the bar table. You are allowed to have a support person sit next to you. Tell the court your name and whether you are the **applicant** or the **respondent**. The applicant goes first.

### Inside the court

The judge, federal magistrate or registrar sit above the court, which is called the 'bench'. The judge or federal magistrate is addressed as 'your honour', the registrar as 'sir/madam' or 'registrar'.

You and the other **party** or their lawyer sit at the table in front of the bench, called the 'bar table'. Bags should be placed on the floor. You need to stand when speaking to the court or being spoken to, and then sit down when the other party speaks.

**Witnesses** cannot sit inside the court until after they have given **evidence**. You can have a support person with you but no children under 18.

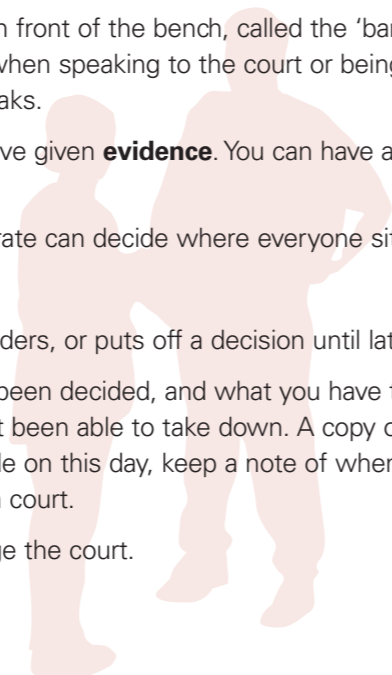
**Note:** In Division 12A cases the judge or federal magistrate can decide where everyone sits.

### At the end

When your case has finished, the court either makes orders, or puts off a decision until later.

If a decision is made on this day, write down what has been decided, and what you have to do or not do. Ask the court to repeat anything you have not been able to take down. A copy of the court orders will be sent to you. If a decision is not made on this day, keep a note of when the decision or judgement is to be 'handed down' (made) in court.

On your way out of court, nod your head to acknowledge the court.



## ▶ Chapter eleven – Once an order is made



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

### Changing court orders

You may be able to change orders the court has made. If you and the other **party** agree on changes, you can **file consent orders** to change them. If it is a parenting order you need to tell the court if there have been **allegations** of family violence or child abuse. If there have, you need to explain how the order you are asking for will deal with these allegations.

If you cannot agree with the other party, you need to decide if you can apply to the court to change the order. To change the orders, the court must be satisfied that the change is needed, based on:

- either party's changed circumstances
- a change in the cost of living
- the discovery that **evidence** was withheld or was wrong.

In the case of financial orders made by **consent**, the court can also consider if there was enough spousal maintenance.

If the court decides there is a good reason to change the orders, it can change, suspend (temporarily stop) or discharge part or all of an order. Discharge means to stop the order completely.

The court can also bring back an order that was suspended, but it cannot bring back an order that has been discharged.

Before you ask the court to make changes, consider what changes you need, and for how long. Applications to vary spousal maintenance are only dealt with in the Federal Magistrates Court (even if the original order was made in the Family Court).

### Using a parenting plan

If you have a parenting order that was made on or after 1 July 2006 and you and the other person want to change it, you can also make a parenting plan. The parenting plan must be followed in the areas where it is different to the order.

See 'Parenting plans' in 'Chapter one – Alternatives to going to court'.

It is important that you get legal advice before making a parenting plan.

### Challenging a decision

If you disagree with a decision you may need to consider if it is possible to appeal it or have it reviewed. It depends on who made the decision, and what power that person used to make the decision. Different time limits apply to different kinds of decision. Get legal advice.

### Decisions that can be reviewed

If a **registrar** made the decision, you can apply for a review of the decision. In some cases you have 28 days, but in other cases you have only seven days from the date the order is made. The decision is reviewed by a **judge** of the Family Court.

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## How do I find out the time limits for review?

You must read the rules and the order very carefully. You need to know which power has been used to make the decision.

– **Seven-day time limits:** Applications for reviews of decisions made by a registrar must be made within seven days. The kinds of decision a registrar can make are set out in Rule 18.06, Tables 18.4 and 18.5. These powers can be used by all registrars.

– **28-day time limits:** Any power used by a judicial registrar under Rule 18.02 and 18.03 and subrule 18.05 (1) and any power used by the senior registrar under subrule 18.05 (1) is subject to a time limit of 28 days.

## Decisions that can be appealed

You can challenge most decisions made in court by appeal if the grounds for appeal can be shown. This is not always possible to do. Rule 22 of the Family Law Rules says that the purpose of an appeal is to correct a mistake or unfairness including judicial discretion. Discretion means the power given to judges to choose between alternatives. The Rules say that appeals help the public have confidence in the courts. Appeals can also develop and explain the law better and help orders stay at a high standard.

Parties must put in their application what they are appealing about (the 'grounds of appeal'). In all cases, there is a hearing to try to settle the parties' differences and to identify the areas of appeal. You need to get permission from the court to change the grounds of appeal after this hearing. Orders are made about how the case is to proceed.

In some cases, permission of the court is needed to start an appeal.

Appeals from decisions of **magistrates** and **federal magistrates** are generally heard by a single judge. The Chief Justice can decide that an appeal should be heard by the Full Court (three or more judges) of the Family Court.

The result of an appeal may be that the decision is:

- affirmed (agreed with)
- reversed (changed)
- referred back to the original court for a new hearing.

Sometimes there may be cross-appeals, where another party challenges a different part of the original decision.

## Time limits

An appeal must be made within 28 days of the date of the original decision.

## Can the order be enforced if there is an appeal?

In most cases, the order can be enforced even though you may be appealing the decision. If you do not want this to happen, you need to apply for a 'stay' (suspension) of the order. This application is decided by the person who made the original decision or by another **judicial officer**.

## Enforcing court orders and contravention orders

If a party has not obeyed the rules of an order, you can go to the court to enforce a court order. An enforcement order makes a party obey an earlier order. You can ask the court to enforce the original order or ask that it be varied. If you want the other party to be punished for breaching (disobeying) you can ask for this to happen or apply for a contravention order. Enforcement orders are mainly used when property orders have been breached. If a parenting order has been breached, contravention orders are usually used.

To enforce a court order you must first register a sealed copy of the order with the court that made it. A sealed copy of an order is a copy that has been stamped and signed by the court where it was originally made.

Generally, a party to the order, and sometimes a third party, can enforce a court order. For example, orders about maintenance of a child can be enforced on behalf of the child. If a party has died, the order can be still be enforced by or against that party. For example, maintenance can be paid to the child from the dead person's estate. You need to get permission from the court to apply if the other party has died.

In some circumstances, a court may decide not to enforce an order. For example, if it has been a long time since the order was made, the court might decide that the original order is now not appropriate.

## How do I enforce an order?

It is important to read the Family Law Rules if you are considering enforcement options.

Chapters 20 and 21 in the Family Law Rules set out two ways for enforcing orders. Chapter 20 deals with the enforcement of financial orders. Chapter 21 deals with enforcing parenting orders, punishment for contravening an order or for contempt of court, or the location or recovery of children.

## Enforcing financial orders

To enforce financial orders you apply to the court. If your orders were made in the Family Court you apply using an 'Application in a case' form, and an **affidavit**. In the Federal Magistrates Court you apply with an 'Initiating application' form and an affidavit setting out:

- the type of order and what the order is that you are trying to enforce
- if there is an appeal of the order in progress
- what steps you have taken to enforce the order yourself (attach any relevant letters)
- the dates and times when the order was disobeyed
- what you want the court to do
- any issues which might be relevant for the court to consider.

A copy of your application must be **served** on the other party.

## Who hears my application to enforce a financial order?

A registrar hears your application. Registrars make orders to enforce the original order. For example, garnishing wages (taking a portion of wages) and making orders about selling **assets**.

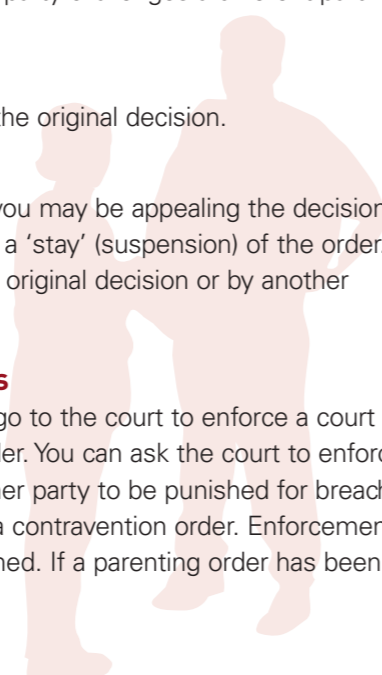
See 'Identify and value the property of the parties' in 'Chapter five – Property'.

Applications to enforce spousal maintenance orders must be filed in the Federal Magistrates Court.

You can ask the court to impose a punishment when the other party has disobeyed an order without reasonable excuse. The application goes before a judge in the Family Court or a federal magistrate in the Federal Magistrates Court. The judge or federal magistrate can:

- place a person on a bond
- fine them
- order them to perform services for the community
- send them to prison.

It is unlikely anyone will be jailed unless they have deliberately and continually disobeyed the order or have been fraudulent. All other enforcement cases are heard by a judge of the Family Court.



# How to run your family law case

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## Enforcing orders about children

If a person does not make a reasonable attempt to follow the orders, or deliberately disobeys (contravenes) an order about children, there can be serious consequences. They risk further court intervention unless there is a reasonable excuse for the behaviour.

If you want to enforce a parenting or recovery order but do not want the other party punished, apply using an 'Application in a case' form with an affidavit. You can get extra time with the child to make up for any lost time which happened as a result of a breach. You can also apply if the other party refuses to obey handover arrangements before the handover was supposed to happen.

To apply for a contravention order where the other party gets penalties, you apply using an 'Application for contravention'. Attach any previous contravention orders. The penalties for breaching a parenting order are based on the seriousness of the breach:

1. the breaching of an order was not proven (s.70 NAA Subdivision C)
2. the breaching was proved but there is a reasonable excuse (Subdivision D)
3. a less serious breach happened without a reasonable excuse (Subdivision E)
4. a more serious breach happened without a reasonable excuse (Subdivision F).

The court must consider if taking part in a post-separation parenting program would help.

The court may also:

- Make an order giving you more time with the child, if you have lost time with them as a result of the breach.
- Make an order giving you money to make up for money you lost as a result of the breach, for example, unused airfares.
- Place the person who disobeyed the order on a bond for up to two years. The bond has conditions such as going to family counselling or family dispute resolution or good behaviour.
- Issue a fine up to \$6000 or imprisonment. This is for more serious breaches only. These penalties cannot be used for child support breaches.

If the court finds that the other party did not disobey the order and you have made a contravention application against them before, you may have to pay the other party's **costs**. This area of the law is complicated. Get legal advice.

Contravention cases are run using Division 12A unless the court orders otherwise. Look at the rules of evidence in Chapter six and think about whether the rules can help or weaken your case. For example, you may apply to use the rules of evidence under Section 69ZT(3), so that hearsay evidence cannot be used.

## Contempt proceedings

Contempt of court is behaviours that show that you do not respect the court. An example would be if a person was ordered to produce property so it could be valued and they hid the property and refused to tell the court where it is. This would be considered contempt of court.

A serious breach of a parenting order (such as stopping a parent from seeing a child by taking the child interstate) may also be dealt with as contempt. The penalties for contempt of court range from fines to prison. The court can also change the original orders.

Contempt proceedings should only be used where there is a very serious and deliberate breach of an order.

Because contempt of court is a criminal offence, other parties, such as court officials, can also start proceedings against a person. This might happen, for example, in response to violent or offensive behaviour at court.

## ► Where to get help



### Victoria Legal Aid

Contact us for free information about the law and how we can help you. You can speak to someone in English or other languages.

### Victoria Legal Aid Legal Information Service



Open Monday to Friday, 8.45 am to 5.15 pm  
Tel: 9269 0120 or 1800 677 402 (country callers)  
See back cover for office locations  
[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

### Do you need an interpreter?

If you need an interpreter to help you speak to any of these services you can call

#### Telephone Interpreter Service

Tel: 131 450

Ask the interpreter to put you through to the service you need.

The Telephone Interpreter Service is free if you are calling Victoria Legal Aid. It is also free for most government agencies and community organisations.

### Victoria Legal Aid publications

You can also use our other family law publications and factsheets on our website. These can be ordered on our website or by calling 9269 0223. Our other family law related publications and factsheets include:

- You and family law – a short guide
- The independent children's lawyer
- Child support and parentage testing
- Family violence intervention order information

**Federation of Community Legal Centres:** 9652 1500. Telephone to find out your nearest Community Legal Centre

**Victorian Aboriginal Legal Service:** 9419 3888 or 1800 064 865 (country callers)

**Law Institute of Victoria:** 9607 9550 (legal referrals)

**Legal Services Commission:** 9679 8001 (For complaints against lawyers). Toll free: 1300 796 344

**Australian Federal Police:** 9607 7777 General enquiries

**Centrelink:** 136 150 (Family Assistance Office) / 131 202 (multilingual service)

**Child Support Agency:** 131 272

**Court Network:** 9603 7433 (information, support and referral service) or 1800 681 614 (country callers)

**Registry of Births, Deaths and Marriages:** 1300 369 367

**Passports office (Department of Foreign Affairs and Trade):** 131 232

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## Courts

### Family Court of Australia and Federal Magistrates Court

For court details, forms, do-it-yourself kits and information:

Tel: 1300 352 000 / [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

Family Law Courts, 305 William St, Melbourne VIC 3000

#### Melbourne (and regional visiting services):

**Albury:** 1800 352 000 / Level 1, 463 Kiewa St, Albury NSW 2640

**Dandenong:** 1800 352 000 / 53-55 Robinson St, Dandenong VIC 3175

**Federal Magistrates Court:** 1300 352 000 (Regional circuit information)

#### Magistrates' Court of Victoria

233 William St, Melbourne 3001. Call Melbourne or 1223 directory assistance or see the White Pages under Justice Department of Victoria for your nearest court.

## Contact centres

**Anglicare Gippsland:** Morwell: 5133 9998

**Bethany Community Support:** Geelong: 5278 8122

**Berry Street Contact Centre:** Watsonia: 9434 1488

**Boyd House (Children's Contact Centre):** Morwell: 5133 6855

**Community West (Children's Contact Service):** Deer Park: 9363 1811

**Child and Family Services Ballarat:** Ballarat: 5337 3333

**Children's Contact Service – Upper Murray:** Wodonga: 02 6051 3539

**Gamblers helpline:** 1800 156 789

**Gordon Care Contact Service:** Mentone: 9584 6777 / Frankston: 9783 5172

**Mallee Family Care and Community Resource Centre:** Mildura: 5023 5966

**Salvation Army Bendigo:** Bendigo: 5442 7699

**Relationships Australia:** Narre Warren: 9704 7788

## Family dispute resolution and other education services

Contact the Family Relationships Advice Line for a full list of approved family dispute resolution providers. Tel: 1800 050 321

### Family Relationship Centres

**Ballarat:** 34 Peel St. Tel: 1300 303 988

**Berwick:** 1-2, 38 Clyde Rd. Tel: 8768 4111

**Broadmeadows:** Level 1, Building 1, 1100 Pascoe Vale Rd. Tel: 9351 3700

**Chadstone:** Suites 1 & 2, 41 Stamford Rd, Oakleigh. Tel: 9654 6999

**Frankston:** Street level, 37 Playne St. Tel: 9770 0341

**Geelong:** Suite 2, 27-31 Myers St. Tel: 1300 656 043

**Greensborough:** 79 Grimshaw St. Tel: 9404 7800

**Melbourne city:** Lower ground level, 379 Collins St. Tel: 8625 3666

**Mildura:** 105 Lemon St. Tel: 1300 667 382

**Ringwood:** 68 Charter St. Tel: 9871 6300

**Shepparton:** 74 Wyndham St. Tel: 5820 0444 or 1300 372 444

**Sunshine:** Ground floor, 1 Clarke St. Tel: 9313 0444

**Traralgon:** 41 Grey St. Tel: 5174 1055

**Warrnambool:** 19 Jamieson St. Tel: 1300 661 790

**Wodonga:** 282 Beechworth Rd. Tel: 02 6022 8644

**Relationships Australia:** 1300 364 277. Telephone to find your nearest office location.

**Lifeworks:** 9654 7360 (head office). Telephone to find your nearest office location.

### Family mediation centres

**Chadstone:** 9654 6999

**Gippsland:** 5176 0211

**Frankston:** 9556 5333

**Moorabbin:** 9556 5333

**Narre Warren:** 9705 6277 / Toll free: 1800 639 523

**Ringwood:** 9876 0677

### Centacare Catholic Family Services

**Bundoora:** 9466 7353

**Dandenong:** 9793 2200

**East Melbourne:** 9287 5555

**Footscray:** 9689 3888

**Geelong:** 5221 7055

**Malvern:** 9576 2377

**Mitcham:** 9873 4344

**Australian Parenting and Relationship Helpline:** 1300 365 859. Telephone to find your nearest service.

## Family violence and support services

**Emergencies:** call Police on '000'

**Aboriginal Family Violence Prevention and Legal Service:** 9654 3111 or 1800 105 303

**Domestic Violence Resource Centre Victoria:** 9486 9866

**Immigrant Women's Domestic Violence Service:** 8413 6800

**Men's Referral Service:** 9428 2899 or 1800 065 973

**Mensline:** 1300 789 978

**Kids Help Line:** 1800 551 800

**Parentline Victoria:** 132 289

**Salvation Army Crisis Centre:** 9536 7777 or 1800 627 727 (country callers)

**Sexual Assault Crisis Line:** 1800 806 292

**Victims of crime helpline:** 1800 819 817

**WIRE (Women's Information and Referral Exchange):** 1300 134 130

**Women's Domestic Violence Crisis Service:** 9373 0123 or 1800 015 188 (24 hours)

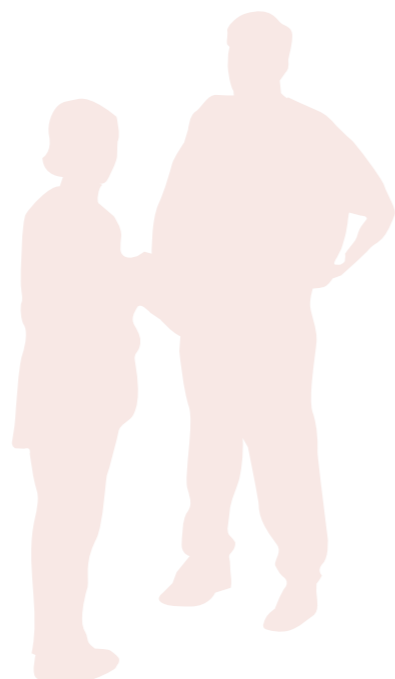


# How to run your family law case

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## Websites

- Australian Federal Police: [www.afp.gov.au](http://www.afp.gov.au)
- Austlii (legal research): [www.austlii.edu.au](http://www.austlii.edu.au)
- Centacare: [www.centacare.com.au](http://www.centacare.com.au)
- Centrelink: [www.centrelink.gov.au](http://www.centrelink.gov.au)
- Child Support Agency [www.csa.gov.au](http://www.csa.gov.au)
- Commonwealth Attorney General's Department: [www.ag.gov.au](http://www.ag.gov.au)  
– Family Law Online: [www.familylaw.gov.au](http://www.familylaw.gov.au)
- Department of Justice Victoria: [www.justice.vic.gov.au](http://www.justice.vic.gov.au)
- Divorce: [www.divorce.gov.au](http://www.divorce.gov.au)
- Family Court of Australia: [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- Family Mediation Centres: [www.mediation.com.au](http://www.mediation.com.au)
- Family Relationships Online: [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)
- Federal Magistrates Court: [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- Federation of Community Legal Centres: [www.communitylaw.org.au](http://www.communitylaw.org.au)
- Law Institute of Victoria: [www.liv.asn.au](http://www.liv.asn.au)
- Lifeworks: [www.lifeworks.com.au](http://www.lifeworks.com.au)
- Magistrates' Court of Victoria: [www.magistratescourt.vic.gov.au](http://www.magistratescourt.vic.gov.au)
- Registry of Births, Deaths and Marriages: [www.bdm.vic.gov.au](http://www.bdm.vic.gov.au)
- Relationships Australia: [www.relationships.com.au](http://www.relationships.com.au)
- Sexual Assault Crisis Line: [www.thewomens.org.au/SexualAssaultInformation](http://www.thewomens.org.au/SexualAssaultInformation)
- Victorian Aboriginal Legal Service: [www.vals.org.au](http://www.vals.org.au)
- Victoria Legal Aid: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)



## Appendix one



### Commonly used forms

All court forms can be downloaded from the court website or are available from the court registry.

**Note:** The Family Court of Australia and the Federal Magistrates Court will merge soon. The standard court forms will change. Check with the court website or registry for the latest forms.

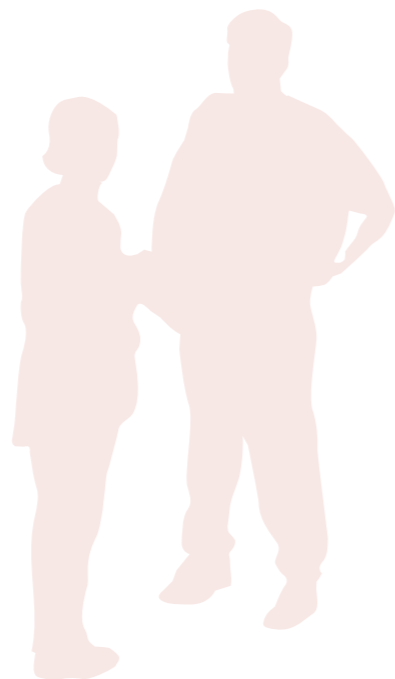
| Topic                             | Family Court of Australia   | Federal Magistrates Court (FMC)   |
|-----------------------------------|---|---|
| Divorce                           | N/A (not available) – file in FMC   | Application for divorce   |
| Application for orders by consent | Application for consent orders  | N/A. If you have reached agreement without starting court proceedings, use Family Court for consent orders  |
| Other application (non-urgent)*   | Application for final orders OR Initiating application form <ul style="list-style-type: none"> <li>• Children or property cases</li> <li>• Declaration of validity of marriage</li> <li>• Decree of nullity</li> <li>• Maintenance</li> <li>• Child support (application or appeal)</li> </ul>                        | Initiating application form <ul style="list-style-type: none"> <li>• Children or property cases</li> <li>• Enforcement orders</li> </ul>  |
| Urgent or interim application*    | Application in a case OR Initiating application form <ul style="list-style-type: none"> <li>• Interim orders (children or property)</li> <li>• Enforcement orders (children or property)</li> <li>• Child recovery</li> <li>• Review of registrar's decision</li> <li>• Summons</li> <li>• Leave to appeal</li> </ul> | Application in a case OR Initiating application form with affidavit <ul style="list-style-type: none"> <li>• Interim orders</li> </ul> Application in a case <ul style="list-style-type: none"> <li>• Child recovery</li> </ul> Application for review <ul style="list-style-type: none"> <li>• Review registrar's decision</li> </ul> Summons: <ul style="list-style-type: none"> <li>• Form 45B – Child support</li> <li>• Form 46 – Enforcement</li> </ul> |
| Affidavit                         | Affidavit<br>Affidavit – Non-filing of family dispute resolution certificate  | Affidavit   |
| Financial statement               | Financial statement<br>Affidavit of service   | Financial statement   |
| Service of documents              | Acknowledgement of service<br>Notice of address for service<br>Service kit (do-it-yourself kit)   | Application for divorce<br>Affidavit of service<br>Affidavit by applicant of service by post<br>Affidavit proving signature<br>No prescribed form for other affidavits of service<br>Acknowledgement of service<br>Notice of address for service<br>Service kit (do-it-yourself kit)  |

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|   |  |   |
|---|--|---|
| <b>Questionnaire</b>                            | Questionnaire – Children or property cases   | Children – Questionnaire<br>Property –<br>• Initiating application form<br>• Financial statement<br>• Affidavit |
| <b>Subpoena</b>                                 | Subpoena<br><b>Note:</b> Consider whether you need to serve a Notice of non-party production of documents before your subpoena | Subpoena  |
| <b>Notice of child abuse or family violence</b> | Notice of child abuse or family violence   | Notice of child abuse or family violence  |
| <b>Contravention</b>                            | Application for contravention  | Same as for Family Court  |
| <b>Contempt</b>                                 | Application for contempt   | Same as for Family Court  |
| <b>Appeal</b>                                   | Notice of appeal<br>Application for final orders OR<br>Initiating application form (for child support appeals)                 | Notice of appeal<br>Notice of appeal (Child support)  |

\* For most Applications, there is a Response form for the other party to use.



## ▶ Appendix two



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

**Note:** The Family Court of Australia and the Federal Magistrates Court will merge soon. The Family Law Rules may change. Make sure you are looking at the latest version of the rules.

### Family Law Rules 2004

#### Schedule 1 – Pre-action procedures

The following is a combination of the sets of rules dealing with pre-action procedures in financial and parenting cases. They are mostly the same. Where there is a provision for financial cases only, the section begins with the word [Financial]. Where the provision is for parenting only, the section begins with the word [Parenting].

There are many more rules to do with running a family law case. You can look up the Rules on the family law courts' website under 'Legislation'. Make sure you read the parts specific to your case.

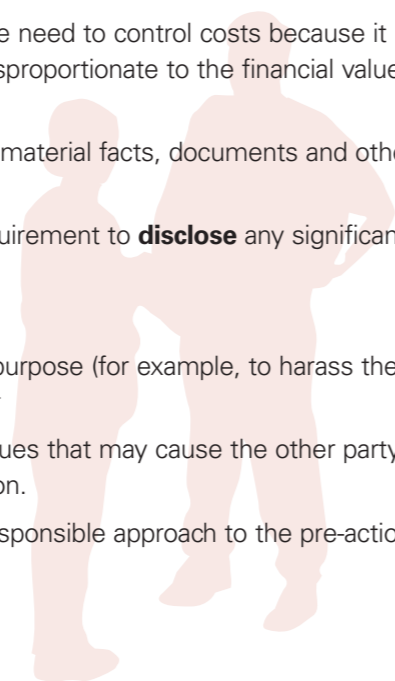
#### 1. General

- (1) Each prospective **party** to a case in the Family Court of Australia is required to make a genuine effort to resolve the dispute before starting a case by:
  - (a) [Financial] participating in dispute resolution, such as negotiation, conciliation, arbitration and counselling
  - (b) exchanging a notice of intention to claim and exploring options for settlement by correspondence, and
  - (c) complying, as far as practicable, with the duty of **disclosure**.
- (2) Unless there are good reasons for not doing so, all parties are expected to have followed these pre-action procedures before **filing** an application to start a case.
- (3) There may be serious consequences, including **costs** penalties, for non-compliance with these requirements.
- (4) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures include cases:
  - (a) involving urgency
  - (b) [Financial] involving **allegations** of family violence; [Parenting] involving allegations of child abuse or risk of child abuse
  - (c) [Financial] involving allegations of fraud; [Parenting] involving allegations of family violence or risk of family violence
  - (d) in which there is a genuinely intractable dispute
  - (e) in which a person would be unduly prejudiced or adversely affected if notice is given to another person (in the dispute) of an intention to start a case, and
  - (f) [Financial] in which a time limitation is close to expiring.

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- (5) The objects of these pre-action procedures are:
- to encourage early and full disclosure in appropriate cases by the exchange of information and documents about the prospective case
  - to provide parties with a process to help them avoid legal action by reaching a settlement of the dispute before starting a case
  - to provide parties with a procedure to resolve the case quickly and limit costs
  - to help the efficient management of the case, if a case becomes necessary (that is, parties who have followed the pre-action procedure should be able to clearly identify the real issues which should help to reduce the duration and cost of the case), and
  - to encourage parties, if a case becomes necessary, to seek only those orders that are reasonably achievable on the **evidence**.
- (6) At all stages during the pre-action negotiations and, if a case is started, during the conduct of the case itself, the parties must have regard to:
- [Financial] the need to protect and safeguard the interests of any child; [Parenting] the best interests of any child
  - the continuing relationship between a parent and a child and the benefits that cooperation between parents brings a child (that is, helping to maintain as good a continuing relationship between the parties and the child as is possible in the circumstances)
  - the potential damage to a child involved in a dispute between the parents, particularly if the child is encouraged to take sides or take part in the dispute
  - [Financial and Parenting] the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them; [Parenting] the principle that people should not seek orders about a child when an application is motivated by intentions other than the best interests of the child
  - the need to avoid protracted, unnecessary, hostile and inflammatory exchanges
  - the impact of correspondence on the intended reader (in particular, on the parties)
  - the need to seek only those orders that are reasonably achievable on the evidence and that are consistent with the current law
  - [Financial] the principle of proportionality and the need to control costs because it is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute, and
  - the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.
- Note:** The duty of disclosure extends to the requirement to **disclose** any significant changes (See clause 4 of this Part).
- (7) Parties must not:
- use the pre-action procedures for an improper purpose (for example, to harass the other party or to cause unnecessary cost or delay), or
  - in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.
- (8) The court expects parties to take a sensible and responsible approach to the pre-action procedures.



- (9) The parties are not expected to continue to follow the pre-action procedures to their detriment if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

## 2. Compliance

- The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.
- If a case is subsequently started, the court may consider whether these requirements have been met and, if not, what the consequences should be (if any).
- The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and considering orders for costs (See paragraphs 1.10 (2) (d), 11.03 (2) (b) and 19.10 (1) (b); [Financial] and paragraph 6.10 (l) (b) of schedule 6).
- Unreasonable non-compliance may result in the court ordering the non-complying party to pay all or part of the costs of the other party or parties in the case.
- In situations of non-compliance, the court may ensure that the complying party is in no worse a position than he or she would have been if the pre-action procedures had been complied with.

### Examples of non-compliance with pre-action procedures:

- not sending a written notice of proposed application
- not providing sufficient information
- not providing documents to the other party
- not following a procedure required by the pre-action procedures
- not responding appropriately within the nominated time to the written notice of proposed application
- not responding appropriately within a reasonable time to any reasonable request for information, documents or other requirement of this procedure.

## 3. Pre-action procedures

- A person who is considering filing an application to start a case must, before filing the application:
  - give a copy of these pre-action procedures to the other prospective parties to the case
  - [Financial] make inquiries about the dispute resolution services available; [Parenting] comply with the requirements of this schedule, and
  - [Financial] invite the other parties to participate in dispute resolution with an identified person or organisation or other person or organisation to be agreed.

3(1A) Paragraph (1)(a) does not apply if, within 12 months before filing the application, the person gave to, or received from, a prospective party to the case, a copy of these pre-action procedures.
- [Financial] Each prospective party must:
  - co-operate for the purpose of agreeing on an appropriate dispute resolution service; and
  - make a genuine effort to resolve the dispute by participating in dispute resolution.
- If the prospective parties reach agreement, they may arrange to have the agreement made binding by filing an Application for **Consent Orders**.

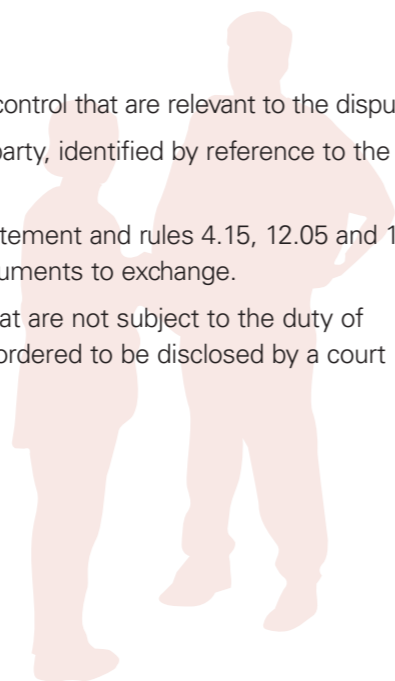
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- (4) Before filing an application, the proposed **applicant** must give to the other party (the proposed **respondent**) written notice of his or her intention to start a case [financial] if:
  - (a) there is no appropriate family dispute resolution service available to the parties
  - (b) a party fails or refuses to participate in dispute resolution, or
  - (c) the parties are unable to reach agreement by dispute resolution.
- (5) The notice under subclause (4) must set out:
  - (a) the issues in dispute
  - (b) the orders to be sought if a case is started
  - (c) a genuine offer to resolve the issues, and
  - (d) a time (the nominated time) (that is at least 14 days after the date of the letter) within which the proposed respondent is required to reply to the notice.
- (6) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (4), stating whether the offer is accepted and, if not, setting out:
  - (a) the issues in dispute
  - (b) the orders to be sought if a case is started
  - (c) a genuine counter-offer to resolve the issues, and
  - (d) the nominated time (that is at least 14 days after the date of the letter) within which the claimant must reply.
- (7) It is expected that a party will not start a case by filing an application in a court unless:
  - (a) the proposed respondent does not respond to a notice of intention to start a case, or
  - (b) agreement is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

## 4. [Financial] Disclosure and exchange of correspondence

- (1) Parties to a case have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner (See rule 13.01).
- (2) In attempting to resolve their dispute, parties should, as soon as practicable on learning of the dispute and, if appropriate, as a part of the exchange of correspondence under clause 3 of these pre-action procedures, exchange:
  - (a) a schedule of **assets**, income and liabilities
  - (b) a list of documents in the party's possession or control that are relevant to the dispute, and
  - (c) a copy of any document required by the other party, identified by reference to the list of documents.
- (3) Parties are encouraged to refer to the Financial Statement and rules 4.15, 12.05 and 13.04 as a guide for what information to provide and documents to exchange.
- (4) Parties are not required to exchange documents that are not subject to the duty of disclosure under rule 13.12 and that would not be ordered to be disclosed by a court (See rule 13.12).



- (5) The documents that the court would consider appropriate to include in the list of documents and exchange include:
  - (a) in a maintenance case:
    - (i) a copy of the party's taxation return for the most recent financial year
    - (ii) the party's bank records for the 12 months ending on the date when the maintenance application was filed
    - (iii) if the party receives wage or salary payments – the party's three most recent pay slips
    - (iv) if the party owns or controls a business – the business activity statements for the business for the previous 12 months, and
    - (v) any other document relevant to determining the income, expenses, assets, liabilities and financial resources of the party, and
  - (b) in a property settlement case:
    - (i) a copy of the party's three most recent taxation returns and assessments;
    - (ii) documents about any superannuation interest of the party, including:
      - (a) a completed superannuation information form for the superannuation interest
      - (b) if the party is a member of a self-managed superannuation fund – a copy of the trust deed and the three most recent financial statements for the fund, and
      - (c) the value of the superannuation interest, including the basis on which the value has been worked out and any documents working out the value.
    - (iii) for a corporation in relation to which a party has a duty of disclosure under rule 13.04:
      - (a) a copy of the financial statements for the three most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns
      - (b) a copy of the corporation's most recent annual return that lists the directors and shareholders, and
      - (c) a copy of the corporation's constitution and any amendments.
    - (iv) for a trust in relation to which a party has a duty of disclosure under rule 13.04:
      - (a) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns, and
      - (b) a copy of the trust deed, including any amendments.
    - (v) for a partnership in relation to which a party has a duty of disclosure under rule 13.04:
      - (a) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and
      - (b) a copy of the partnership agreement, including any amendments;
    - (vi) for a person or entity mentioned in subparagraph (i), (iii), (iv) or (v) – any business activity statements for the previous 12 months; and
    - (vii) unless the value is agreed, a market appraisal of the value of any item of property in which a party has an interest.

# How to run your family law case

A do-it-yourself kit to help you prepare a family law case and represent yourself in court

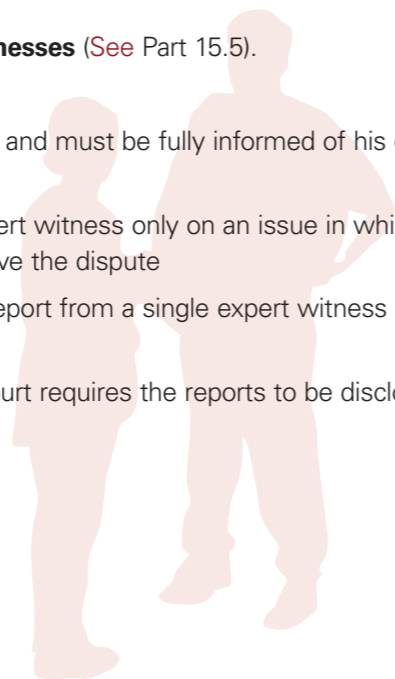
- (6) It is reasonable to require a party who is unable to produce a document for inspection to provide a written authority addressed to a third party authorising the third party to provide a copy of the document in question to the other party, if this is practicable.
- (7) Parties should agree to a reasonable place and time for the documents to be inspected and copied at the cost of the person requesting the copies.  
**Note:** The court refers to Chapter 13 as a guide for what is regarded as reasonable conduct by the parties in making these arrangements.
- (8) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates.
- (9) Documents produced by a person to another person in compliance with the pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the case only.
- (10) Parties must bear in mind that an object of the pre-action procedures is to control costs and, if possible, resolve the dispute quickly.
- (11) Disagreements about disclosure may be better managed by the court within the context of a case.

## 4. [Parenting] Disclosure and exchange of correspondence

- (1) Parties to a case have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner (See rule 13.01).
- (2) In attempting to resolve their dispute, parties should, as soon as practicable on learning of the dispute and, if appropriate, as a part of the exchange of correspondence under clause 3 of these pre-action procedures, exchange copies of documents in their possession or control relevant to an issue in the dispute (for example, medical reports, school reports, letters, drawings, photographs).
- (3) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates.
- (4) Documents produced by a person to another person in compliance with the pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the case only.

## 5. Expert witnesses

- (1) There are strict rules about reports and expert **witnesses** (See Part 15.5).
- (2) In summary:
  - (a) an expert witness must be instructed in writing and must be fully informed of his or her obligations
  - (b) if possible, parties should seek to retain an expert witness only on an issue in which the expert witness's evidence is necessary to resolve the dispute
  - (c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties, and
  - (d) if separate experts' reports are obtained, the court requires the reports to be disclosed.



## 6. Lawyers' obligations

**Note:** See also rules 1.08 and 19.03; [Parenting] and clause 6.03 of schedule 6.

- (1) Lawyers must, as early as practicable:
  - (a) advise clients of ways of resolving the dispute without starting legal action
  - (b) advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty
  - (c) subject to it being in the best interests of the client and any child, endeavour to reach a solution by settlement rather than start or continue legal action
  - (d) notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement if, in the lawyer's opinion, the compromise or settlement is a reasonable one
  - (e) in cases of unexpected delay, explain the delay and whether or not the client may assist to resolve the delay
  - (f) advise clients of the estimated costs of legal action  
(See rule 19.03; [Parenting] and clause 6.03 of schedule 6)
  - (g) advise clients about the factors that may affect the court in considering costs orders
  - (h) give clients documents prepared by the court (if applicable) about:
    - (i) the legal aid services and dispute resolution services available to them
    - (ii) the legal and social effects and the possible consequences for children of proposed litigation, and
    - (iii) actively discourage clients from making ambit claims or seeking orders that the evidence and established principle, including recent case law, indicates is not reasonably achievable.
- (2) The court recognises that the pre-action procedures cannot override a lawyer's duty to his or her client.
- (3) It is accepted that it is sometimes impossible to comply with a procedure because a client may refuse to take advice, however, a lawyer has a duty as an officer of the court and must not mislead the court.
- (4) If a client wishes not to disclose a fact or document that is relevant to the case, a lawyer has an obligation to take the appropriate action, that is, to cease to act for the client.

**Note:** Section 12E of the Act requires legal practitioners to give persons considering instituting proceedings documents containing information about non-court based family services and courts processes and services.

# How to run your family law case

A do-it-yourself kit to help you prepare a family law case and represent yourself in court

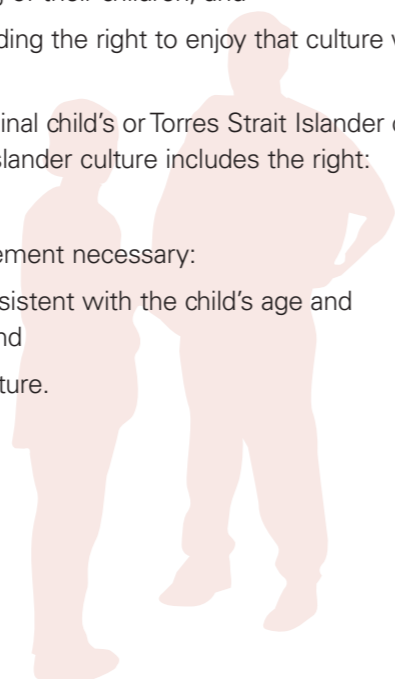
## ▶ Appendix three



### Family Law Act 1975 – Children

#### Section 60B – The purpose and principles of Part 60B

- (1) The object of this Part are to ensure that the best interests of children are met by:
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child
  - (b) protecting children from physical or psychological harm from being subjected to, or exposed, abuse, neglect or family violence
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential, and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except where it is or would be contrary to a child's best interests):
  - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together
  - (b) children have a right to spend time on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives)
  - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children
  - (d) parents should agree about the future parenting of their children, and
  - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2) (e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
  - (a) To maintain a connection with that culture, and
  - (b) To have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views, and
    - (ii) to develop a positive appreciation of that culture.



#### Section 65C – Who may apply for a parenting order

A parenting order in relation to a child may be applied for by:

- (a) either or both of the child's parents
- (b) the child
- (ba) a grandparent of the child, or
- (c) any other person concerned with the care, welfare or development of the child.

#### Section 60CA – Child's best interests paramount consideration in making a parenting order

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

**Note:** Paramount means most important.

# How to run your family law case

A do-it-yourself kit to help you prepare a family law case and represent yourself in court

## ▶ Appendix four



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

### Parenting order examples – where the child lives and who the child will spend time or communicate with

There are no standard orders. The following are some examples of wording you might use for **interim** or **final orders**. These examples should be varied to meet your particular circumstances. Get legal advice about the information which needs to be included in parenting orders.

- (1) That the husband/wife/mother/father/other **party** and the \_\_\_\_\_ have equal shared parental responsibility for the child/ren of the marriage: (give full names and dates of birth of each child).
- (2) That beginning \_\_\_\_\_ day of \_\_\_\_\_ the child/ren live with (or "spend time with") the \_\_\_\_\_ from \_\_\_\_\_ am/pm Monday until \_\_\_\_\_ am/pm the following Monday and each alternate week, and live with the \_\_\_\_\_ from \_\_\_\_\_ am/pm Monday beginning \_\_\_\_\_ day of \_\_\_\_\_ until \_\_\_\_\_ am/pm Monday every other alternate week.
- (3) That the said child/ren live with the \_\_\_\_\_.
- (4) That the \_\_\_\_\_ spend time and communicate with the said child/ren as follows:
  - (a) each alternate week from \_\_\_\_\_ am/pm on \_\_\_\_\_ day to \_\_\_\_\_ am/pm on \_\_\_\_\_ day, beginning on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ am/pm.
  - (b) on two evenings during the week on the telephone by agreement between the parties and if there is no agreement, then on Tuesday and Thursday evenings between \_\_\_\_\_ am/pm and \_\_\_\_\_ am/pm.
  - (c) for one week in each of the term school holidays school holidays, with the \_\_\_\_\_ to have the first half in 20\_\_ and the \_\_\_\_\_ to have the first half in 20\_\_ and alternating each year after this.
  - (d) for two weeks in a row in the summer school holiday to begin on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ am/pm.
  - (e) on Christmas Day (or other days of religious significance) by agreement between the parties and if there is no agreement, from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm.
  - (f) on Easter Sunday (or other days of religious significance) by agreement between the parties and if there is no agreement, from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm.
  - (g) at times agreed between the parties on Mother's and Father's Day and if there is no agreement, from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm on Mother's/Father's Day.
  - (h) at times agreed between the parties on the child's birthday and if there is no agreement from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm.
  - (i) or as otherwise agreed between the parties from time to time.

- (5) That transport to and from any time the children spend with the \_\_\_\_\_ shall be shared between the parties, with the \_\_\_\_\_ collecting the child at the beginning of time spent with the \_\_\_\_\_ and the \_\_\_\_\_ returning the child at the end of the time the children spend with the \_\_\_\_\_.

### Other orders

This paragraph shows how specific areas can be addressed in an order.

- (6) That each party let the other party know if the child requires medical attention while in their care. The parties will advise each other within 24 hours of the the child receiving medical attention.
- (7) That the parties keep each other informed of any change of address or telephone number within seven (7) days of any such change.
- (8) That the \_\_\_\_\_ authorise the child's school to provide the \_\_\_\_\_ with copies of the child's school reports.

### Interim orders

This example is of a 'Departure prohibition order for children' and 'recovery order'. Get legal advice about wording for your court order.

- (9) That this case be deemed urgent and that all times be abridged.
- (10) i. Until further order, the husband/wife/mother/father/both parties, his/her servants and/or agents are restrained from taking or sending or attempting to take or send the child/ren: \_\_\_\_\_, born \_\_\_\_\_, \_\_\_\_\_, born \_\_\_\_\_ from the Commonwealth of Australia.  
ii. The Marshal and all officers of the Australian Federal Police and the police forces of the states and territories are requested and authorised to give effect to these orders.
- (11) That the court issue a recovery order for the return of the child to husband/wife/mother/father/other party a person who has a parenting order that provides them with residence for the said child/ren.
  - i. A recovery order do issue authorising/directing the Marshal, all officers of the Australian Federal Police and all officers of the police forces of all the states and territories of the Commonwealth of Australia, with such assistance as may be required, and if necessary by force:
    - (a) to find and recover the child/ren: \_\_\_\_\_, born \_\_\_\_\_, \_\_\_\_\_, born \_\_\_\_\_ and to deliver the said child to the husband/father/wife/mother at \_\_\_\_\_ in the state of Victoria, or such other place as the husband/father/wife/mother and the person effecting such recovery agree to be appropriate; and
    - (b) to stop and search any vehicle, vessel or aircraft and to enter and search any premises or place in which there is at any time reasonable cause to believe that the said child/ren may be found.
- (12) That the child be permitted to travel outside Commonwealth of Australia notwithstanding that the **consent** of the husband/wife/mother/father has not been obtained AND IT IS requested that the Department of Foreign Affairs and Trade issue a passport for the said child.

# How to run your family law case

A do-it-yourself kit to help you prepare a family law case and represent yourself in court

## ▶ Appendix five



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

**Note:** The law has changed. From 1 March 2009, if you were in a defacto (including same-sex) relationship you are now able to use the Family Law Act to settle your property dispute. If this applies to you, make sure you check the latest version of the Act for information on property orders and spousal maintenance for former defacto couples. Get legal advice.

### Family Law Act 1975 – Property and spousal maintenance

#### Section 80 – General powers of court

Section 80 says that the court can do any or all of the following things:

- order payment of a lump sum, in one amount or by instalments
- order payment of a weekly, monthly, yearly or other periodic sum
- order that a transfer or settlement of property be made as payment of maintenance for a **party** to a marriage
- order that payment of any sum be paid in any way
- order that any deed or instrument be executed and that these documents of title be produced to enable an order to be carried out or to provide security for the due performance of an order. Or order that any other things be done to enable this
- appoint or remove trustees
- order that payments be made to a party to the marriage, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the marriage
- make a final order, a temporary order or an order for a particular length of time or for the life of a person or during the lives of others or until further order
- impose terms and conditions
- make an order by agreement
- make any other order which it thinks is necessary to do justice
- make an order under this Part at any time before or after the making of a decree under another Part.

#### Section 72 – Right of spouse to maintenance

Section 72 talks about the right of a husband or wife to receive maintenance. The section says that:

A party to a marriage is liable to maintain the other party if they are reasonably able to do so, if and only if, that other party is unable to support herself or himself adequately because of:

- (a) having to care for a child of the marriage who has not turned 18 years old
- (b) their age or physical or mental incapacity which affects their employment or ability to be employed
- (c) any other adequate reason

having regard to any matter referred to in subsection 75(2).

#### Section 75(2) – Matters to be taken into account in relation to spousal maintenance

The factors found under Section 75 (2) of the Act are to do with property and spousal maintenance cases.

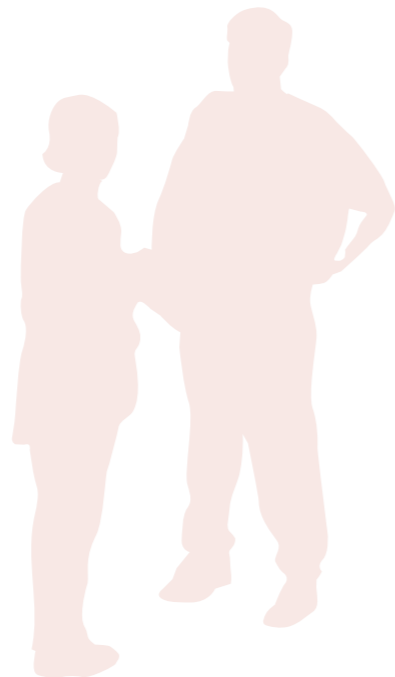
The section lists the matters to be taken into consideration in relation to spousal maintenance:

- (a) the age and health of each of the parties
- (b) the income, property and financial resources of each of the parties and the physical and mental ability of each of them to be employed
- (c) whether either party has the care or control of their child who is under 18 years of age
- (d) commitments of each of the parties that are necessary to enable the party to support:
  - (i) himself or herself, and
  - (ii) a child or another person that the party has a duty to maintain
- (e) the responsibilities of either party to support any other person
- (f) subject to subsection (3) the eligibility of either party for a pension, allowance or benefit under:
  - (i) any Australian law or the law of another country, or
  - (ii) any superannuation fund or scheme, within or outside Australiaand the rate of the pension, allowance or benefit being paid to either party
- (g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable
- (h) the extent to which the payment of maintenance to the party would help that person to receive education or training, enabling them to get a job or establish a business
- (ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, and
- (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party
- (k) the length of the marriage and the extent to which it has affected the earning capacity of the party who is seeking maintenance
- (l) the need to enable a party to continue to parent the children if they wish to do so
- (m) if either party is living with another person – the financial circumstances relating to their living situation
- (n) the terms of any order made or proposed to be made under Section 79 in relation to:
  - (i) the property of the parties
  - (ii) vested bankruptcy property in relation to a bankrupt party
- (naa) the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:
  - (i) a party to the marriage; or
  - (ii) a person who is a party to a de facto relationship with a party to the marriage; or
  - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
  - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and

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- (na) any child support under the *Child Support (Assessment) Act* 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage, and
- (o) anything else the court decides to take into account
- (p) the terms of any financial agreement that the parties are legally obliged to obey
- (q) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage.



## ▶ Appendix six



Words in **bold** are explained in 'What do these words mean?' at the front of this booklet.

### Examples of general property orders

These could be used for both **interim** and **final orders**. Insert both your names in the orders.

- (1) That the *(name)* pay to *(name)* the sum of \$ \_\_\_\_\_ ('the payment') on or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ ('the date').
- (2) That in addition to the payment:
  - (a) *(name)* do all such acts and things and sign all such documents as required to transfer to *(name)* all of his/her title and interest in the real property situated at and known as (insert full address). This will be at the expense of *(name)* This being the whole of the land more particularly described in Certificate of Title Volume \_\_\_\_\_ Folio \_\_\_\_\_ ('the real property')
  - (b) *(name)* indemnifies *(name)* against all payments and liability associated with the mortgage registered No. \_\_\_\_\_ to (specify lender) ('the mortgage') and all rates, taxes, and outgoings related to the real property of whatsoever nature and kind.
- OR
- (3) That *(name)* and/or *(name)* does all acts and things necessary to sell out of Court the real property situated at and known as (insert full address). This is the whole of the land described in Certificate of Title Volume \_\_\_\_\_ Folio \_\_\_\_\_ ('the real property'). The proceeds of sale will be paid in the following manner and priority:
  - (a) in payment of the amount required to discharge the mortgage registered No. \_\_\_\_\_ to (specify lender) ("the mortgage")
  - (b) in payment of agent's commission and auction expenses if any due on the sale
  - (c) in payment of legal costs
  - (d) the balance to be divided equally between *(name)* and *(name)*
- OR
- (e) the balance to be divided between *(name)* and *(name)* as to \_\_\_\_\_% to *(name)* and \_\_\_\_\_% to *(name)*.
- (4) That pending the payment or completion of the sale:
  - (a) *(name)* has the sole right to occupy the real property and that during such right of occupation *(name)* pays all installments pursuant to the mortgage and all rates and taxes and like apportionable outgoings of the real property as they fall due
  - (b) the parties hold their respective interests in the real property upon trust
  - (c) neither party encumber the real property without the agreement in writing of the other party.

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(5) That (*name*) does all necessary acts and things and signs all necessary documents to transfer to (*name*) at the expense of (*name*) all of his/her right title and interest in \_\_\_\_\_ (for example, car, boat, shares)

(6) That (*name*) is liable for and indemnifies (*name*) against all payments in respect to \_\_\_\_\_ (for example, loan, debt).

## OR

If you are uncertain of your entitlements, you may ask the court to determine the property division.

In this case, you may seek an order as follows:

(7) That (*name*) pays to (*name*) such amount as the court deems appropriate in the circumstances.

(8) That (*name*) transfers his/her right title and interest in the real property situated at and known as (insert full address). This being the whole of the land described in Certificate of Title Volume \_\_\_\_\_ Folio \_\_\_\_\_ ('the real property') to (*name*) in return for such payment as the court deems appropriate in the circumstances.

## Examples of general spousal maintenance orders

(9) That (*name*) pays to (*name*) for his/her maintenance the sum of \$ \_\_\_\_\_ per week.

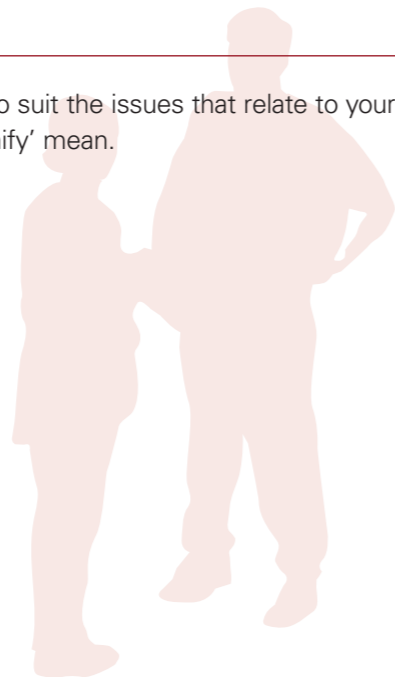
(10) That (*name*) pays to (*name*) for his/her maintenance the sum of \$ \_\_\_\_\_ by way of a lump sum maintenance payment.

## Examples of interim property orders

(11) That until the final determination of these proceedings, (*name*) is allowed to solely use and occupy the ex-matrimonial home and (*name*) is hereby restrained from entering the property without the agreement of (*name*).

(12) That until the final determination of these proceedings, (*name*) is stopped from selling, giving away and dealing with, alienating or disposing of any of the following assets (for example, house, money, redundancy payouts).

These examples are only a guide and can be changed to suit the issues that relate to your case. You should get legal advice on what words like 'indemnify' mean.



# How to run your family law case

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## Victoria Legal Aid

### Legal Information Service

Tel: 9269 0120

Country callers: 1800 677 402

### Roundtable Dispute Management

MELBOURNE

338 La Trobe St

Melbourne VIC 3000

Tel: 9269 0120

Country callers: 1800 677 402

### Offices

#### MELBOURNE

350 Queen St

Melbourne VIC 3000

Tel: 9269 0120

Country callers: 1800 677 402

#### Suburban offices

##### BROADMEADOWS

North western suburbs

Level 1, Building 1

Broadmeadows Station Centre

1100 Pascoe Vale Rd

Broadmeadows VIC 3047

Tel: 9302 8777

##### DANDENONG

Westernport region

Level 1, 9-15 Pultney St

Dandenong VIC 3175

Tel: 9767 7111

##### FRANKSTON

Peninsula region

Cnr O'Grady Ave & Dandenong Rd

Frankston VIC 3199

Tel: 9784 5222

##### PRESTON

North eastern suburbs

42 Mary St

Preston VIC 3072

Tel: 9416 6444

#### RINGWOOD

Outer eastern suburbs

23 Ringwood St

Ringwood VIC 3134

Tel: 9259 5444

#### SUNSHINE

Western suburbs

1/474 Ballarat Rd

Sunshine VIC 3020

Tel: 9300 5333

#### Regional offices

##### BALLARAT

Central Highlands region

Area A, Level 1

75 Victoria St

Ballarat VIC 3350

Tel: 5329 6222

Toll free: 1800 081 719

##### BENDIGO

Loddon-Campaspe region

424 Hargreaves St

Bendigo VIC 3550

Tel: 5448 2333

Toll free: 1800 254 500

##### GEELONG

Barwon region

Level 2, 199 Moorabool St

Geelong VIC 3220

Tel: 5226 5666

Toll free: 1800 196 200

#### HORSHAM

Wimmera region

29 Darlot St

Horsham VIC 3400

Tel: 5381 6000

Toll free: 1800 177 638

#### MORWELL

Gippsland region

Cnr Chapel & George St

Morwell VIC 3840

Tel: 5134 8055

#### BAIRNSDALE

Gippsland region (branch office)

101A Main St

Bairnsdale VIC 3875

Tel: 5153 1975

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