



Applying to the court for orders

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

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

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

What are orders?

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

There are three main types of orders:

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

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

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

Applications for final orders and consent orders attract a filing fee.

Who can apply for orders?

PARENTING

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

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

FINANCIAL

Married couples

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

De facto couples

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

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

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

Legal advice

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

How do you apply for orders?

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

For more information about specific applications see the publications available at:

» www.familycourt.gov.au

» www.federalcircuitcourt.gov.au

»  **LIVE CHAT** on the websites, or

» call 1300 352 000.

In the Family Court

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

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

For **interim orders**, you must file:

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

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

- 1 An *Application for Consent Orders*.
- 2 An *Annexure to Proposed Consent Parenting Order* (for parenting cases only).
- 3 Terms of settlement prepared in accordance with the *Application for Consent Orders – proposed orders template*.
- 4 Enough copies of the consent order for **all** parties involved. These must be certified as true copies of the original consent order.

If you are seeking consent orders you should refer to Part 10.4 of the *Family Law Rules 2004*. The Rules may require you to meet additional requirements.

There is a filing fee for consent orders. In some cases an exemption may be sought.

In the Federal Circuit Court

You must pay the relevant fee and file:

- 1 An *Initiating Application (Family Law)* if you are commencing a case or an *Application in a Case* where an *Initiating Application (Family Law)* has already been filed in the current proceedings.
- 2 An *Affidavit*
- 3 A *Financial Statement* (for financial cases only).
- 4 A certificate from a Family Dispute Resolution practitioner (for parenting cases only, unless one of the exceptions outlined in the brochure *Compulsory Family Dispute Resolution – court procedures and requirements* applies).
- 5 A *Notice of Risk* (this is a mandatory form which must be used in all parenting cases only).

Fees

If a fee applies to the application, you must pay the fee. The registry cannot accept an application for filing without payment of the fee.

In some cases a reduced fee may be sought for a divorce application, or decree of nullity, or in respect of other fees, an exemption if you hold certain government concession cards or you can demonstrate financial hardship.

For more information see the fees section at

www.familycourt.gov.au or

www.federalcircuitcourt.gov.au

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court of Australia and Federal Circuit Court of Australia cannot provide legal advice.

What if someone else has started the case first?

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

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

Where do you apply?

The Family Court and the Federal Circuit Court both deal with family law matters and you should file with the court best suited to deal with your application.

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

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

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

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

Divorce and child support applications should be filed in the Federal Circuit Court. For more information about divorce or child support and how to file, see the 'How do I apply for divorce?' web page or the brochure *Child Support Applications* at www.federalcircuitcourt.gov.au

Things to remember

- You can efile the following applications online at www.comcourts.gov.au:
 - » Application for divorce
 - » Initiating application for final and interim
 - » Response to an initiating application
 - » Applications in a case on active final orders applications
 - » Response to an application in a case
 - » Application for consent orders
- If a filing fee applies you must pay the fee when filing. The courts accept the following methods of payment:
 - » Credit/debit cards (Visa & Mastercard) *in person or by mail*
 - » Debit cards other than Visa or Mastercard *only if paid in person*
 - » NO cash payments are accepted
- Where you allege child abuse or family violence in relation to a child in the Family Court, you must also file a *Notice of Child Abuse, Family Violence or Risk of Family Violence* and an affidavit which sets out the evidence on which the allegations in the form are based.

In the Federal Circuit Court a *Notice of Risk* must be filed in **all** parenting cases. If an allegation is made in the form, an affidavit setting out the evidence on which the allegations are based must also be filed unless the evidence relied on is contained in the affidavit filed with the Application or Response.
- You must file the original and at least two photocopies of all documents (a copy for each party), except for your marriage/ divorce order or the child/ren's birth certificates. If there are more than two parties, make additional copies.
- Once filed, you must arrange to serve the documents on the other party or parties.