

How do I apply to the Family Court for a Parenting Order?

This information is based on the law as at July 2010. It is written for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.

For most children's matters you go to the Federal Magistrates Court – See the Centre's tip sheet *How do I apply to the Federal Magistrates Court for a Parenting Order ?* However, if your matter is more complicated than usual (for example, there are allegations of child abuse, children with special needs or allegations of mental health or substance abuse) you go to the Family Court.

What do I have to do before I can file an application in the Family Court?

Before you file an application, you must do certain things (i.e. follow "pre-action procedures") to make sure all of the issues in dispute are out in the open, and both you and the other party have tried your best to settle the matter.

There are some circumstances where the Court *may* excuse you from the pre-action procedures in parenting cases if, for example:

- your application is urgent
- you are alleging family violence issues and/or child abuse
- your dispute is particularly difficult
- you would be greatly disadvantaged if notice is given to the other party
- there has been a previous application about the same issue in the last 12 months

Unless you are excused from pre-action procedures, before filing your application, you must:

1. Provide a copy of the pre-action procedures to the other party. These procedures are listed in schedule 1 to the Family Law Rules (see the Family Law Courts website).
2. Attend Family Dispute Resolution (FDR) with the other party, unless you are exempt from doing so. This is a kind of mediation. See the Centre's tip sheet *Family Dispute Resolution*.
3. Give the other party written notice of :
 - your intention to file an application if the FDR service fails
 - the issues in dispute
 - the orders you intend to ask for
 - a genuine offer to resolve the issues
 - a time (at least 14 days) by which the other party is to respond

The other party must then provide to you (within the set time) a notice in writing stating whether or not the offer is accepted. If it is accepted then you can enter into consent orders. If the offer is rejected then the reply must state:

- the issues in dispute
- the orders they want
- a genuine counter-offer to resolve the issues
- a nominated time (at least 14 days) within which you must reply

4. Exchange relevant documents (if any) with the other party. In children's matters this could include things like medical and school reports and correspondence.

If the other party doesn't respond to your notice, or you can't reach agreement through correspondence/negotiations, you can then file your application.

There may be serious penalties, including costs orders, if you do not comply with the pre-action procedures.

What documents do I need to file ?

- An Initiating Application – in which you state both the interim (if any) and the final orders that you are applying for
- An affidavit, *only* if you are seeking interim or procedural orders, or explaining why you believe you are exempt from FDR
- If you are applying for interim orders, and are relying on relevant evidence from a third party to support your case, such as a family member, friend or professional, you will need to file a separate affidavit on their behalf
- If you are alleging child abuse or family violence, or a risk of either, a form 4 – notice of child abuse or family violence

The following documents must also be filed:

- A good photocopy of your marriage certificate or divorce order (if you are/were married to the other party) or your children's birth certificates if you were not married to the other party
- A filing fee - which is currently \$243, unless exempt
- a certificate from a FDR practitioner, unless exempt

What happens at Court ?

Most parenting cases in the Family Court are now conducted as *Less Adversarial Trials* (LATs). Before being referred for a LAT in the Family Court, you will have attended at least one Court event, such as a case assessment conference or a procedural hearing.

You will usually attend a case assessment conference, followed immediately by a procedural hearing on the first day. Your next day in Court will be before the LAT Judge in charge of your case.

The process generally:

- is focused on the children and their future
- includes you in the process
- is less formal than usual Court proceedings

The Judge, rather than the parties or their lawyers, decides what issues will be addressed, what information is to be put before the Court and how the trial is run.

The aim of the LAT is to try and resolve your matter in an informal setting, without the need to progress to a hearing.

What does it involve?

You and the other party or parties and your lawyers (if you have them) talk to the Judge about what arrangements you each want for the children. The Judge will talk to you directly, asking you questions (or through your lawyer if you prefer) and you will have an opportunity to say what you think the Judge needs to hear.

The Judge will play an active role in determining what further evidence is required to help get you and the other parent or person come to some agreement about your children. This means that the trial should be much shorter than it would otherwise have been, and may even finish on the first day. If it does not, the Judge will schedule further hearing dates.

An independent children's lawyer (see below) who will investigate and make submissions to the Judge on your children's best interests, may also be present at the LAT. A family consultant (a psychologist or counsellor employed by the Court), may also attend the hearing right from the first day. He or she will speak with each of you separately and try to help you reach an agreement, either on an interim or final basis. If you can't agree, the family consultant may be ordered to prepare a family report for the Judge.

After the report is finished the matter will be scheduled to come before the Judge again.

What is included in a family report?

The family consultant will include in that report everything they believe is appropriate when dealing with the care, welfare and development of your children. He or she will sometimes make recommendations at the end of the report as to what they see as likely consequences should your children live with one person as opposed to the other. Sometimes they even suggest who they think the children should live with and what time they should spend with the other party. You may need to pay for part of the cost of the report.

If a report is to be prepared, your children will have a chance to talk to the consultant. The Court will usually consider an older child's views when looking at where they want to live and the time that they want to spend with the other person. The older and more mature your child, the more the Court will consider their views, but it will not always follow them completely. How much will depend upon all of the other circumstances of the case. In other words, this is just one of the issues to be considered by the Judge when deciding upon what is in your child's overall best interests.

It is not the role of the family consultant to do the Judge's job for him/her, and to say what they think should happen in a particular case. The report is nevertheless an important piece of evidence which is usually heavily relied upon by the Judge when determining your matter.

What is a Client questionnaire?

This is a document in which you provide your current circumstances, safety issues, current parenting arrangements (e.g. schooling and financial support issues) and future parenting arrangements. This document usually becomes part of your evidence.

What is an independent children's lawyer?

In some 'difficult' matters before the Court it is appropriate to have an independent children's lawyer (what used to be called a child or a separate representative) for example, where there are allegations of child abuse or where there are real issues of cultural or religious differences affecting the child. It is the role of the independent children's lawyer to act on behalf of your child, rather than on behalf of one of the parties.

It is the job of the independent children's lawyer to present evidence (if relevant) and make submissions as to whom they think your child should live with and what time if any, they should spend with the other party.

What if I don't agree with the orders the Judge makes?

If you believe that the Judge made a mistake in a matter of fact or law then you can lodge an appeal. You cannot, however, lodge an appeal just because you are unhappy with the decision. Appeals are very expensive and there are strict time limitations (usually 28 days) to follow. Appeals are not things to be entered into lightly. If you believe that you have grounds for an appeal, then you must seek urgent legal advice.

If later on you and the other parent or person can agree about a change to the orders made, then you can file a consent order to change them. If there is no agreement, and you want to vary the orders which have been made (and you are not lodging an appeal) you must wait until there has been a *significant change in circumstances* before you can file another initiating application.

What if the other person does not comply?

If the other parent or person does not comply with the order once it has been made, then you can bring a contravention application. The Court has the power to vary a parenting order (where one party has contravened the order) without the need for a separate variation application to be filed.

About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney-General's Department.