



Child Related Proceedings

Cases involving children and parenting issues
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

The purpose of this brochure is to provide you with an overview of child related proceedings in the Family Court of Western Australia.

If you are looking for information about financial cases in the Family Court of WA, refer to the brochure series “Financial Cases in the Family Court”. All brochures are available from the Family Court of WA registry or website: www.familycourt.wa.gov.au.

Working with parents and others

Parenting cases, or child related proceedings are matters where people seek the help of the Court to resolve a dispute about their rights and obligations towards children.

These cases do not follow the same procedure as a traditional court case:

- You will need to participate in compulsory Family Dispute Resolution before you can make an application to the Court.

If your matter goes to Court:

- You will be assigned a Family Consultant who will stay involved throughout your case. The Family Consultant is available to help you negotiate with the other party and to help the Court find the best possible outcome for the children.
- Once you have been assigned to a Judicial Officer (a Judge or Magistrate) in most cases the same judicial officer will hear your case through to its conclusion.

Your Judicial Officer may:

- Ask you and the other party questions during Court appearances.
- Invite you to consider ways in which your dispute can be resolved or how you can be a better parent.
- Appoint an Independent Children’s Lawyer if they feel that it would be in the children’s best interests.
- Order the production of a Family Report.

The best interests of the child

The Court’s primary concern when resolving or determining family disputes is to work out what is in the best interests of children.

At all stages during the pre-action proceedings and during the case itself, you will need to keep in mind:

- the need to protect and safeguard the interests of children;
- the importance of a continuing relationship between children and both parents, and the benefits the child gains from the parents cooperating with one another;
- the potential damage to a child involved in a dispute, particularly if the child is encouraged to take sides or take part in any dispute between the parents;
- the importance of identifying issues early and exploring options for settlement;
- the need to avoid protracted, unnecessary, hostile and inflammatory exchanges;
- the impact of correspondence (emails, letters, SMS etc) on the reader, particularly on the other party in the case;
- the need to seek only those orders that are realistic and reasonable on the evidence and that are consistent with current law;

- the principle of proportionality and the need to control costs; and
- the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute. For more information about the duty of disclosure, refer to the brochure “Duty of Disclosure”, available from the Family Court of WA registry and website.

The steps towards resolving your dispute

1. Pre-action procedures, Compulsory Family Dispute Resolution

- Before you can begin a child related proceeding you will need to attend compulsory Family Dispute Resolution. If you are unable to do this you should apply to the Court for an exemption, explaining why you cannot.
- For more information read brochure 2 “Pre-Action Procedures” and the “Exemption Form Kit”.

2. Filing an application, applying to the Court for a parenting order

- If you cannot reach an agreement through Family Dispute Resolution, or you are unable to participate in family dispute resolution, you may make an application to the Court.
- To do this you will need to lodge an application at the Family Court of WA registry.
- For information about filing an application for final orders read the “Parenting Orders Kit”.

3. Your first Court appearance

- When you or the other party file an application in the Family Court of WA, you are generally listed to a hearing before a Magistrate.
- You will be assigned a Family Consultant who will remain allocated to your case throughout the proceedings and attempt to assist you to resolve your dispute.
- For information about your first Court appearance read brochure 3 “Case Assessment Conference”.

4. Hearings

- You may be required to make multiple Court appearances before the Court is ready to make a final order.
- After each hearing you will be given information about what you will need to do before your next Court appearance.
- The Court may make legally binding interim orders if they are sought. These orders will not become the final order unless both parties and the court agree.
- The Court may order the Family Consultant to do a Family Report. For more information about Family Reports read brochure 4 “Preparing for a Family Report”.

5. The Trial

- This will be when the Court decides on a final order.
- You will be given the opportunity to state your case and submit evidence to the Court.
- At the conclusion of the trial, the Court will make a final order for your case.
- For more information see the booklet “A guide to representing yourself in the Family Court of WA”.

6. Your Court order

- A Court order is legally binding from the moment it is made. If someone breaches a Court order, you can apply to the Court to have it enforced.
- For more information read brochure 5 “Parenting Orders, Obligations, Consequences and who can help”.

Can I appeal if I am not satisfied with the result?

You have the right to appeal any decision made by the Judicial Officer.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case.

A lawyer can also help you reach an agreement with the other party without going to Court.

You can get 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

Lawyer's obligations

Your lawyer must, as early as possible:

- advise you (the client) of ways of resolving the dispute without starting legal action;
- advise the client of their obligations and requirements imposed by Sections 60I and 60J of the *Family Law Act 1975* or Sections 66H and 66I of the *Family Court Act 1997*;
- advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty;
- subject to it being in the best interests of the client and any child, endeavour to reach an agreement rather than start or continue legal action;
- notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement where, in the lawyer's opinion, the compromise or settlement is a reasonable one;
- in cases of unexpected delay, explain the delay to their client and whether or not the client may assist to resolve the delay;
- advise clients of the estimated costs of legal action;
- advise clients about the factors which may affect the Court in considering costs orders;
- actively discourage clients from making ambit claims or seeking orders which the evidence and established principles, including recent case law indicates, is not reasonably achievable, and;
- provide the client with documents prepared by the Court about:
 - the social and legal effects of separation;
 - the services provided to families by the Family Court and by government, community and other agencies, and
 - the obligations created by an order and the consequences for failing to comply with an order.

Personal safety

If you have any concerns about your safety while attending Court, please call 08 9224 8222 before your Court appointment or hearing. Options for your safety at Court will be discussed and arrangements put in place. By law, people must inform a Court if there is an existing or pending family violence order involving themselves or their children.

Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of WA registry.

Who else can help?

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| ▪ Legal Aid WA
www.legalaid.wa.gov.au
1300 650 579 | ▪ Aboriginal Legal Service of Western Australia
Family Law Unit
www.als.org.au
08 9265 6666 or 1800 019 900 |
| ▪ Community Legal Centres Association of WA
www.communitylaw.net
08 9221 9322 | ▪ Law Council of Australia – Family Law Section
www.familylawsection.org.au
02 6246 3788 |
| ▪ Law Society of Western Australia
www.lawsocietywa.asn.au
08 9322 7877 | |

This brochure 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 cannot provide legal advice.
The Family Court of WA respects your right to privacy and the security of your information.
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