# 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

June 2025

**Produced by Victoria Legal Aid**

Victoria Legal Aid

570 Bourke Street

Melbourne VIC 3000

For free information about the law and how we can help you:

* visit our website [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
* use our Legal Help Chat on the website, Monday to Friday, 8 am to 5 pm, excluding public holidays
* phone Legal Help on 1300 792 387, Monday to Friday, 8 am to 5 pm, excluding public holidays.

For business queries, phone (03) 9269 0234

First edition 2002

Ninth edition 2025

© 2025 Victoria Legal Aid. This work is licensed under a Creative Commons Attribution 4.0 licence. You are free to re-use the work under that licence, on the condition that you credit Victoria Legal Aid as author, indicate if changes were made and comply with other licence terms. The licence does not apply to any images, photographs or branding, including the Victoria Legal Aid logo.

**Changes to the law**

The law changes all the time. To check for changes you can [visit our website](http://www.legalaid.vic.gov.au), use our Legal Help Chat or [phone us](http://www.legalaid.vic.gov.au/contact-us).

**Disclaimer**: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your situation.

# Contents

[How to run your family law case 1](#_Toc169093637)

[A do-it-yourself kit to help you prepare a family law case and represent yourself in court 1](#_Toc169093638)

[Contents 3](#_Toc169093639)

[Victoria Legal Aid 8](#_Toc169093640)

[About this kit 9](#_Toc169093641)

[What do these legal words mean? 10](#_Toc169093642)

[Other references 11](#_Toc169093643)

[Chapter one – alternatives to going to court 12](#_Toc169093644)

[Family dispute resolution 12](#_Toc169093645)

[Family dispute resolution and parenting orders 13](#_Toc169093646)

[Consent orders 13](#_Toc169093647)

[Parenting plans 14](#_Toc169093648)

[Binding financial agreements 15](#_Toc169093649)

[Pre-action procedures 15](#_Toc169093650)

[Family dispute resolution 15](#_Toc169093651)

[Duty of disclosure and exchange of documents 15](#_Toc169093652)

[Chapter two – where there is family violence or child abuse 16](#_Toc169093653)

[How the Family Law Act defines family violence and child abuse 16](#_Toc169093654)

[How to tell the court 16](#_Toc169093655)

[What the court must do 17](#_Toc169093656)

[Family violence intervention orders 17](#_Toc169093657)

[Family violence and parenting orders 17](#_Toc169093658)

[Family violence and family dispute resolution 18](#_Toc169093659)

[Magellan program 18](#_Toc169093660)

[Evatt List 18](#_Toc169093661)

[Chapter three – applying to a court 19](#_Toc169093662)

[Which court 19](#_Toc169093663)

[The complexity of the case 19](#_Toc169093664)

[Procedural issues 19](#_Toc169093665)

[Making an application 20](#_Toc169093666)

[Responding to an application 20](#_Toc169093667)

[Court documents 20](#_Toc169093668)

[Forms 20](#_Toc169093669)

[Documents to hand in with an application 20](#_Toc169093670)

[Where to file your application 21](#_Toc169093671)

[Court fees 21](#_Toc169093672)

[Arranging service of court documents 22](#_Toc169093673)

[Responding to an application 23](#_Toc169093674)

[Division 12A 23](#_Toc169093675)

[Family law case management pathway 24](#_Toc169093676)

[First Court Event 24](#_Toc169093677)

[Interim Hearing 24](#_Toc169093678)

[Dispute Resolution Event 25](#_Toc169093679)

[Compliance and Readiness Hearing 25](#_Toc169093680)

[The trial 25](#_Toc169093681)

[Chapter four – Children 26](#_Toc169093682)

[Important sections of the Act to read are: 26](#_Toc169093683)

[ Section 60B – The purpose of Part VII 26](#_Toc169093684)

[ Section 65C – Who may apply for a parenting order 26](#_Toc169093685)

[ Section 60CA – Child's best interests paramount consideration in making a parenting order 26](#_Toc169093686)

[ Section 60CC – How a court determines what is in a child’s best interests 26](#_Toc169093687)

[The best interests of the children in section 60CC 26](#_Toc169093688)

[Preparing your case 26](#_Toc169093689)

[Applying for parenting orders 27](#_Toc169093690)

[Parenting orders and dispute resolution 28](#_Toc169093691)

[Interim (short) orders 28](#_Toc169093692)

[Family and expert reports 28](#_Toc169093693)

[Independent children’s lawyer 28](#_Toc169093694)

[Family consultants and family counsellors 28](#_Toc169093695)

[Will the court ask to speak to the children? 29](#_Toc169093696)

[Costs 29](#_Toc169093697)

[Chapter five – Property 30](#_Toc169093698)

[Time limits 31](#_Toc169093699)

[Interim orders 31](#_Toc169093700)

[Caveats 31](#_Toc169093701)

[Third parties 31](#_Toc169093702)

[Bankruptcy 31](#_Toc169093703)

[Steps in a property case 32](#_Toc169093704)

[Step 1 – Identify and value the property of the parties 32](#_Toc169093705)

[Step 2 – Is it just and equitable to make an order? 32](#_Toc169093706)

[Step 3 – Contributions towards the property 33](#_Toc169093707)

[Step 4 – Apply the law to your case 33](#_Toc169093708)

[Spousal maintenance 34](#_Toc169093709)

[Costs 34](#_Toc169093710)

[Chapter six – Preparing for a trial or hearing 35](#_Toc169093711)

[Work out the issues in dispute 35](#_Toc169093712)

[Gather evidence in support of your case 35](#_Toc169093713)

[Division 12A cases 35](#_Toc169093714)

[How to get evidence 36](#_Toc169093715)

[What if there is no independent evidence available? 36](#_Toc169093716)

[What if someone else has the evidence I need? 36](#_Toc169093717)

[Some important rules about evidence 37](#_Toc169093718)

[Hearsay evidence 37](#_Toc169093719)

[Opinion evidence 37](#_Toc169093720)

[Character evidence 37](#_Toc169093721)

[Past behaviour 37](#_Toc169093722)

[Legally privileged information 37](#_Toc169093723)

[Expert witnesses 38](#_Toc169093724)

[Keep records 38](#_Toc169093725)

[What information to keep: 38](#_Toc169093726)

[Chapter seven – Affidavits 39](#_Toc169093727)

[How an affidavit is used 39](#_Toc169093728)

[How to prepare an affidavit 39](#_Toc169093729)

[Facts you know about 39](#_Toc169093730)

[The statement must be true 40](#_Toc169093731)

[Your statement must be relevant to the issues in dispute 40](#_Toc169093732)

[Structure of an affidavit 40](#_Toc169093733)

[Annexures 41](#_Toc169093734)

[Contents of an affidavit 41](#_Toc169093735)

[Children’s issues 41](#_Toc169093736)

[Writing your affidavit 41](#_Toc169093737)

[Pre-separation history 42](#_Toc169093738)

[Separation and current arrangements 42](#_Toc169093739)

[Facts that link to the relevant law 43](#_Toc169093740)

[Parental responsibility 43](#_Toc169093741)

[Parenting time arrangements 43](#_Toc169093742)

[Changing a parenting order, communicating and handling disagreements 43](#_Toc169093743)

[Proposed arrangements 44](#_Toc169093744)

[Property issues 45](#_Toc169093745)

[Chapter eight – Disclosure and subpoenas 46](#_Toc169093746)

[Duty of disclosure 46](#_Toc169093747)

[Asking to see a document 47](#_Toc169093748)

[Subpoenas 47](#_Toc169093749)

[Documents and records 48](#_Toc169093750)

[Tips 48](#_Toc169093751)

[Serving a subpoena 48](#_Toc169093752)

[Witnesses 48](#_Toc169093753)

[Chapter nine – The trial 50](#_Toc169093754)

[Before the trial 50](#_Toc169093755)

[What happens at a trial? 50](#_Toc169093756)

[Opening address 50](#_Toc169093757)

[Evidence in chief 50](#_Toc169093758)

[Cross‑examination 51](#_Toc169093759)

[Ban on personal cross examination 51](#_Toc169093760)

[Preparing your cross‑examination 51](#_Toc169093761)

[Example of cross‑examination 52](#_Toc169093762)

[Re‑examination 52](#_Toc169093763)

[Closing address 53](#_Toc169093764)

[Chapter ten – On the day 54](#_Toc169093765)

[Before you go into court 54](#_Toc169093766)

[Going into court 54](#_Toc169093767)

[At the end 54](#_Toc169093768)

[Chapter eleven – Once an order is made 56](#_Toc169093769)

[Accessing court orders 56](#_Toc169093770)

[Changing court orders 56](#_Toc169093771)

[Using a parenting plan 56](#_Toc169093772)

[Challenging a decision 56](#_Toc169093773)

[Decisions that can be reviewed 57](#_Toc169093774)

[Decisions that can be appealed 57](#_Toc169093775)

[Time limits 57](#_Toc169093776)

[Can the order be enforced if there is an appeal? 57](#_Toc169093777)

[Enforcing court orders and contravention orders 57](#_Toc169093778)

[How do I enforce an order? 58](#_Toc169093779)

[Enforcing financial orders 58](#_Toc169093780)

[Who hears my application to enforce a financial order? 58](#_Toc169093781)

[Enforcing orders about children 58](#_Toc169093782)

[Contempt proceedings 59](#_Toc169093783)

[Where to get help 60](#_Toc169093784)

[Victoria Legal Aid 60](#_Toc169093785)

[Do you need help phoning us? 60](#_Toc169093786)

[Translating and Interpreting Service 60](#_Toc169093787)

[National Relay Service 60](#_Toc169093788)

[Local offices 60](#_Toc169093789)

[Other legal services 60](#_Toc169093790)

[Federation of Community Legal Centres 60](#_Toc169093791)

[Law Institute of Victoria 60](#_Toc169093792)

[Legal Services Board of Victoria 60](#_Toc169093793)

[Victorian Aboriginal Legal Service 61](#_Toc169093794)

[Courts 61](#_Toc169093795)

[Federal Circuit and Family Court of Australia 61](#_Toc169093796)

[Magistrates’ Court of Victoria 61](#_Toc169093797)

[Other useful contacts / More legal information 61](#_Toc169093798)

[Australian Federal Police 61](#_Toc169093799)

[Services Australia (Centrelink) 61](#_Toc169093800)

[Services Australia (Child Support) 61](#_Toc169093801)

[Court Network for information, support and referral service 61](#_Toc169093802)

[Victorian Registry of Births, Deaths and Marriages 61](#_Toc169093803)

[Passports office (Department of Foreign Affairs and Trade) 62](#_Toc169093804)

[Family Relationships Online 62](#_Toc169093805)

[Commonwealth Attorney Generals Department 62](#_Toc169093806)

[Department of Justice Victoria 62](#_Toc169093807)

[Austlii (legal research) 62](#_Toc169093808)

[Family dispute resolution and other education services 62](#_Toc169093809)

[Family Relationship Centres 62](#_Toc169093810)

[To locate your nearest centre contact the Family Relationship Advice Line on 1800 050 031 62](#_Toc169093811)

[Family mediation and dispute resolution centres 62](#_Toc169093812)

[Lifeworks 62](#_Toc169093813)

[Relationships Australia 62](#_Toc169093814)

[Centacare Catholic Family Services 62](#_Toc169093815)

[Family violence and support services 63](#_Toc169093816)

[Inside back cover 64](#_Toc169093817)

[Useful Victoria Legal Aid resources 64](#_Toc169093818)

[Victoria Legal Aid 65](#_Toc169093819)

[Offices 65](#_Toc169093820)

[Suburban offices 65](#_Toc169093821)

[Regional offices 65](#_Toc169093822)

[Publication orders 65](#_Toc169093823)

[Appendix one - Commonly used forms 66](#_Toc169093824)

[Appendix two – Parenting order examples 68](#_Toc169093825)

[Examples of wording to use for interim of final orders 68](#_Toc169093826)

[Other orders 68](#_Toc169093827)

[Interim orders 69](#_Toc169093828)

[Example of ‘Departure prohibition order for children’ and ‘recovery order’ 69](#_Toc169093829)

[Appendix three – General property order examples 70](#_Toc169093830)

[Examples of general spousal maintenance orders 70](#_Toc169093831)

[Examples of interim property orders 70](#_Toc169093832)

[Victoria Legal Aid generic program template 70](#_Toc169093833)

[How to best reach your audience 70](#_Toc169093834)

# Victoria Legal Aid

We serve the Victorian community by providing information, legal advice and education with a focus on the prevention and early resolution of legal problems.

We prioritise more intensive legal services, such as legal advice and representation, to those who need it the most, using evidence to inform what we do. We also recognise the connections between legal and social issues in the way we do our work and advocate for change.

We work to address the barriers that prevent people from accessing the justice system, by participating in systemic reforms and strategic advocacy.

# About this kit

* What this booklet covers
* Getting more help
* Legal words

**What this kit covers**

This kit is for people involved in disputes under the [Family Law Act 1975 (Commonwealth)](http://www.comlaw.gov.au/Details/C2014C00355)(the Act) about children and property.

[Appendix one - Commonly used forms](#_Appendix_one) lists some of the court forms you may use. Make sure you use the current court forms as these change. You can download them from the [Federal Circuit and Family Court of Australia website](https://www.fcfcoa.gov.au/fl/forms) or get copies from the court on **1300 352 000**.

The [Family Law Rules 2021](https://www.legislation.gov.au/Details/F2021L01197)set out the rules of the Federal Circuit and Family Court of Australia, not the law relating to family law (which is contained in the Act). The Rules are updated regularly.

The Federal Circuit and Family Court of Australia also has a [Central Practice Direction](https://www.fcfcoa.gov.au/fl/pd/fam-cpd) that sets out the management of a family law case in the court and what is expected from the parties at each stage of the case.

It is important that you read these Rules and Central Practice Direction before you start your court case. You will also find in the appendices examples of parenting and property orders.

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.

**Getting more help**

This kit gives general information, not legal advice. We have put the contact details of helpful organisations in the ‘Where to get help’ section on page 61.

**Legal words**

To help you, we have explained some words in ‘What do these words mean?’ on the next page. These words are also highlighted in bold the first time they appear in each section.

# What do these legal words mean?

In every section of this kit we highlight legal words in **bold** when they first appear. The definitions for these words are below. We have also included other legal words that you might hear used.

**affidavit** – a written document containing 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 that 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** – when you agree to something

**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 (documents or witnesses) used in court to prove something

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

**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

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

**interim** – an interim hearing looks at the issues that need to be decided in the short term such as where the children will live

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

**judicial officer** – a person who the law says can hear and decide cases, such as a judge, or magistrate

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

**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

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

**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. Also a person who is present when someone signs a document who confirms that the signature is genuine by adding their own signature

## Other references

* a reference to ‘child’ includes children
* a reference to ‘the court’ means the Federal Circuit and Family Court of Australia unless otherwise stated.
* references to ‘the law’ or ‘the Act’ means the[Family Law Act 1975 (Commonwealth)](http://www.comlaw.gov.au/Details/C2014C00355)
* references to ‘the Rules’ means the [Family Law Rules 2021](https://www.legislation.gov.au/Details/F2021L01197) made by the Federal Circuit and Family Court of Australia.

# Chapter one – alternatives to going to court

For words in bold see What do these legal words mean?

## Family dispute resolution

In most family law cases 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 Victoria Legal Aid Family Dispute Resolution Service. See [our website](https://www.legalaid.vic.gov.au/family-dispute-resolution) for more information. 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 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 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 service are written down, usually as consent orders or parenting plans.

See [Consent orders](#_Consent_orders) and [Parenting plans](#_Parenting_plans).

For more information about the service and your eligibility you can call **(03) 9269 0500** or **1800 136 832 (toll free)** or call Legal Help on **1300 792 387**. You can also call the Family Relationships Advice line on **1800 050 321** or visit their website for information on [family mediation and dispute resolution](https://www.familyrelationships.gov.au/separation/family-mediation-dispute-resolution#a5). 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](#_Where_to_get).

Family dispute resolution may not be right for every situation, for example, in some situations Chapter two – 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 [Chapter two – where there is family violence or child abuse](#_Chapter_two_–) for more information.

See [Where to get help](#_Where_to_get) for a list of services.

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](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60i.html) 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](#interim) (short term) orders or [consent orders](#consentorders) (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 (b)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60i.html) and [Section 60J](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60j.html) 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**](#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**](#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 Federal Circuit and Family Court of Australia, 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 one - Commonly used forms](#_Appendix_one). 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.

See examples of children’s and property orders in Appendix two – Parenting order examples and Appendix three – General property order examples.

A kit to help you fill out a consent order form can be downloaded from the [Federal Circuit and Family Court of Australia website](https://www.fcfcoa.gov.au/fl/forms/app-consent-kit). You can use this kit as a checklist to fill out the application properly.

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

## 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.

A parenting plan is not legally enforceable. 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.

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](http://www.comlaw.gov.au/Details/C2015C00033)
* how the parties will communicate with each other when exercising parental responsibility
* how the child will communicate with another person – for example by 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.

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.

Couples (married or defacto) can make binding financial agreements before, during or at the end of a marriage or defacto relationship. This includes same sex couples. 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 Federal Circuit and Family Court of Australia has pre-action procedures that you have to do. These procedures are found in [Schedule one](http://classic.austlii.edu.au/au/legis/cth/num_reg/fcafcoalr2021202101197559/sch1.html) of the [Family Law Rules 2021](https://www.legislation.gov.au/Details/F2021L01197).

The court [website](https://www.fcfcoa.gov.au/fl/pubs/comp-fdr) also has information on what to do before you file your application. The pre-action procedures vary according to the type of dispute. Download and read:

* [Before you file - pre-action procedures for parenting cases](https://www.fcfcoa.gov.au/fl/pubs/pre-action-parenting)
* [Before you file - pre-action procedures for financial cases](https://www.fcfcoa.gov.au/fl/pubs/pre-action-financial)

You can also get this information from the court registry.

Read the Rules and website information to find out what you must do for your own case.

### 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 or financial 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**](#finalorders)are made.

See Chapter eight – Disclosure and subpoenas.

# Chapter two – where there is family violence or child abuse

For words in bold see What do these legal words mean?

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 the child was hurt. 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: [https://www.fcfcoa.gov.au.](https://www.fcfcoa.gov.au/fl/fv/faq)

## How the Family Law Act defines family violence and child abuse

Family violence is defined in the Act as violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful.

The Act provides a list of sample behaviours that may constitute family violence. These include:

* assault, sexual assault, or other sexually abusive behaviour, stalking, repeated derogatory taunts
* intentionally damaging or destroying property or pets
* unreasonably denying you financial autonomy, or if you are a financial dependent, unreasonably
* withholding from you financial support for your reasonable living expenses
* depriving you of your family, friends or culture
* unlawfully depriving you or a family member of your liberty.

See [section 4AB](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4ab.html) of the Act.

Child abuse is defined in the Act to include assault, including sexual assault, of a child; causing serious psychological harm to a child and serious child neglect - see [section 4](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html) of the Act. Exposing or subjecting a child to family violence is included as psychological harm - see [section 4AB](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4ab.html).

Rules regarding family violence and child abuse in the Act include sections [60CF](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cf.html), [60J](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60j.html), [67Z](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s67z.html), [67ZBA](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s67zba.html), [67ZBB](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s67zbb.html) and [69ZW](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s69zw.html).

Any behaviour that causes you to fear for your safety or wellbeing is included whether this is actual threats, physical violence or controlling behaviours. The court will look at the behaviour and assess whether your reaction is justified.

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 help you.

See [Where to get help](#_Where_to_get).

## How to tell the court

To tell the court about family violence or child abuse, you need to file a ‘Notice of child abuse, family violence or risk’ form. You also need to file an [**affidavit**](#affidavit) to support what you have written in the Notice.

See Chapter seven – Affidavits to read about filing a ‘Notice of child abuse family violence or risk’.

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**](#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.

## What the court must do

The court must take quick action if there is an [**allegation**](#allegation)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 Families, Fairness and Housing about the allegations.

The court is able to order the Department of Families, Fairness and Housing 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**](#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 Federal Circuit and Family Court orders. Both parties must notify the Federal Circuit and Family Court of Australia and [**file**](#file)copies of the order if there are family violence intervention orders and they were:

* final (not opposed by the other [**party**](#party)), or
* contested orders (where the parties may have given evidence in court and the [**magistrate**](#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 order. Get legal advice.

The Act requires the court to promote the safety of a child and their carers from family violence.

## 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](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) and [60CG](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cg.html) 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 orders, go to [Victoria Legal Aid’s website](https://www.legalaid.vic.gov.au/). You can also call **(03) 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**](#filing)an application at court. See [section 60J](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60j.html) 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**](#judge) 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, family violence or risk’ has been filed in the Federal Circuit and Family Court of Australia 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**](#registrar). Expert investigations and assessments are ordered. An [**independent children’s lawyer**](#independentchildrenslawyer)is appointed for every child. The court aims to complete the case within six months. A [**family consultant**](#familyconsultant)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

## Evatt List

The Evatt List is a specialist list developed by the Federal Circuit and Family Court of Australia to manage cases considered to involve high risk safety concerns due to family violence. It applies to family law cases involving parenting orders only or parenting and financial orders.

The Evatt List ensures that families who are the most vulnerable are provided with resources, support and timely court events. Eligible cases are identified through risk screening after a case is filed in the court. Once identified, suitable cases are managed intensively as efficiently and effectively as possible to minimise the risk of further trauma and harm to the family.

For further information go to the court website and read: [The Evatt List](https://www.fcfcoa.gov.au/fl/lighthouse/evatt)

# Chapter three – applying to a court

For words in bold see What do these legal words mean?

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

## Which court

If you live in a metropolitan (city and suburbs) area you apply directly to the Federal Circuit and Family Court of Australia. 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 Federal Circuit and Family Court of Australia to hear.

The Federal Circuit and Family Court of Australia in metropolitan Melbourne is 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 court usually sits for one week in each area. To get a list of dates when the court operates in the country (circuit dates), contact the court at 1300 352 000 or [visit its website](https://www.fcfcoa.gov.au/daily-court-lists).

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**](#party)agrees, ask for a ‘transfer order’ by [**consent**](#consent).

The Federal Circuit and Family Court of Australia is made up of divisions one and two. All family law cases start in Division two but which division the court will list your case depends on some factors listed below.

### The complexity of the case

Children’s and property cases are heard in both divisions of the court. Some more difficult or detailed children’s cases are only heard in Division one. For example, cases likely to run more than two days.

The Federal Circuit and Family Court of Australia Division one is the only division 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.

The court can also transfer cases between its divisions, when appropriate.

### Procedural issues

If you apply to the Federal Circuit and Family Court of Australia, 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, 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 the court’s [website](https://www.fcfcoa.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**](#file)(gives) an application to the court first is called the [**applicant**](#applicant). The person who files a response to an application with the court is called the [**respondent**](#respondent). It does not affect your case if you are the applicant or respondent.

The court divides its forms into [**interim**](#interim)and [**final orders**](#finalorders). 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 filinga Response
* agree to the orders the other person has asked for. In this case you, sign a [**consent order**](#consentorders)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 starting a family law case about children or financial matters or both. A different form is used for divorce.

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. You can also use an ‘Application in a proceeding’ and ‘Response to an application in a proceeding’ to apply and respond to interim orders. Court forms can change.

Make sure you use the most recent version of the family law forms. You can download the current forms at [the Federal Circuit and Family Court of Australia website](https://www.fcfcoa.gov.au/fl/forms) or get them from the court registry. The court can tell you about which forms to use, call **1300 352 000**.

See [Appendix one - Commonly used forms](#_Appendix_one) for a list of commonly used forms.

### Documents to hand in with an application

When you file (hand in) an application for parenting orders with the court, you must include the following additional forms as well:

1. s. 60I certificate, unless good grounds exist for not having one, such as urgency of the application.
2. A Genuine Steps Certificate
3. A notice of child abuse, family violence or risk.
4. If you are filing the ‘Initiating application form’ for both interim and final orders, you need to file a separate affidavit for the interim orders.
5. If you are not filing an affidavit, then a parenting questionnaire.

When you file (hand in) an application for financial orders with the court, you must include the following additional forms as well:

1. A Genuine Steps Certificate
2. A financial statement
3. If you are filing the ‘Initiating application form’ for both interim and final orders, you need to file a separate affidavit for the interim orders.
4. If you are not filing an affidavit, then a financial questionnaire.

You can get these forms from the court or its [website](https://www.fcfcoa.gov.au/fl/forms).

Court 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.

The Federal Circuit and Family Court of Australia encourages you to file your documents online via the Commonwealth Courts Portal. To use the Portal you must first register. To create your individual username and password go to [www.comcourts.gov.au](https://www.comcourts.gov.au/pip/saml/authn_request?SigAlg=http%3A%2F%2Fwww.w3.org%2F2000%2F09%2Fxmldsig%23rsa-sha1&SAMLRequest=eJyFkEFPg0AUhO%2F9FWTv0AVZoZvSpmqMTappKPXgxWyXR90EdnHfQvz5YlsT46HM9c2byTfz5VdTez1YVEZnJAwo8UBLUyp9zMi%2BePRTslx4F81RNHXLV5370Dl8doDOG%2F418tMhI53V3AhUyLVoALmTfLd63vAooLy1xhlpauJNvCtaP2QkjWU6K9NQskMiYkggrBhlSXLDWCqiWTqTVVVFLB6Jev3Fin6wrrcidrDW6IR2g59GkU8Tn94WNOYx4yF9GwnYXujulD5v92%2BK4O8Uh7MJ%2BVNRbP0cSmVBuvGGXpVgX4a4jLQCR%2FwrRLBu4L83GrsG7A5sryTs801GpohmWpuj0u9CIpkuJt%2FZ5YV%2B&Signature=fmw9v3hBK6GJojuZO333LkENvyRaw9UqJeB5kiyW%2F9kRNRnOydngA8PBnCUL%0ArKmCNLz9r7DOA2ei78RuLWSIfg%3D%3D%0A&ByName=pas).

If you are unable to file your documents through the Portal, the court prefers that you email documents to the registry. The Victorian filing email addresses are:

Melbourne Registry – melbourne@fcfcoa.gov.au

Dandenong Registry – dandenong@fcfcoa.gov.au

If you are not able to file online, then you can post your application or give it to the court yourself. The Victorian postal addresses are:

Melbourne Registry – GPO Box 9991 Melbourne VIC 3001.

Dandenong Registry – PO Box 9991 Dandenong VIC 3175.

If personally filing documents, then beforehand 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 an electronic 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

The courts charge fees for filing your ‘Initiating application form’ or ‘Response form’. Fees also apply to interim applications filed separately after your Initiating application or Response. An exemption from payment of filing fees applies if you hold certain government concession cards. In some cases a reduced fee may be sought for a divorce application, or decree of nullity, if you can demonstrate financial hardship.

For more information, ask court staff or check the court [website](https://www.fcfcoa.gov.au/resources/fees). Always check with the court registry for changes in fees.

## Arranging service of court documents

You need to arrange to [**serve**](#serve)a sealed copy of your Application or Response and any other documents on the other party as soon as possible after filing, and:

* 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. If you have eFiled you must print the sealed documents for service.

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](#independentchildrenslawyer), 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**](#service)**’** (this address is on the application you have been served with).

For more information on serving documents see the court [website](https://www.fcfcoa.gov.au/hdi/serve-fl-documents).

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 court [website](https://www.fcfcoa.gov.au/fl/forms) 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.

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

You need to file a ‘Response to an initiating application’ form.

If the orders concern children, then you also need to file:

1. A Genuine Steps Certificate;
2. A notice of child abuse, family violence or risk form;
3. A parenting questionnaire form; and
4. If the application is for interim orders, then an affidavit.

If the orders concern property, then you also need to file:

1. Genuine Steps Certificate;
2. A financial questionnaire form;
3. A financial statement form; and
4. If the application is for interim orders, then an affidavit.

If the application is for interim orders only, you need to file a ‘Response to an application in a proceeding’ with an affidavit.

All the documents and forms need to be served on the other party as soon as practicable after filing and at least seven days before the first court date or in the case of an interlocutory application, at least three days prior to the hearing.

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 family law processes about children shorter and more informal and flexible.

See [section 69ZN](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s69zn.html) for the principles of how children’s cases are to be run and [section 69ZQ](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s69zq.html) 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**](#judge)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**](#witness)who will attend, and when and if reports are needed
* most rules of [**evidence**](#evidence)do not apply, unless the judge 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 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 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 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)
* any property or financial case and both people agree to Division 12A being used
* any case where both parties agree and the court grants ‘leave’ (permission).

In children’s cases, a Child Court Expert 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 courts’ division 1 and at any time during a hearing in the court’s division two.

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

## Family law case management pathway

The Federal Circuit and Family Court has a defined pathway for managing family law cases started after 1 September 2021. There are different steps involved. The court’s [Central Practice Direction: Family Law Case Management](https://www.fcfcoa.gov.au/fl/pd/fam-cpd) explains each step of this pathway. You should read this information 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.

The family law case management pathway applies to parenting cases and to financial cases, so all cases have the same court events.

### First Court Event

The first court event is a Directions Hearing. This should happen within eight weeks of filing your initiating application. Each party or their lawyer must go to court on this date. This hearing is held before a court officer called a **judicial** [**registrar**](#registrar).

The purpose of a Directions Hearing is to assess and triage your case and make necessary orders to help a timely resolution of your matter. The court will:

* Assess if each party has complied with the pre-filing requirements for dispute resolution.
* Ensure all documents are filed
* Assess the need for an interim hearing and any expert evidence
* Make directions for dispute resolution
* Identify if your matter should be transferred from Division 2 to Division 1 of the court.
* Consider any risk issues and deal with appropriately.

### Interim Hearing

If you have an urgent issue that needs to be decided quickly, then your case will be listed for an interim hearing. An interim hearing looks at the issues that need to be decided in the short-term (for example, where children will live) until a final decision can be made. A decision is made based only on the paperwork filed in the case. The hearing is before a Senior Judicial Registrar or a Judge and will happen at an appropriate time having regard to urgency and the need to obtain appropriate evidence.

### Dispute Resolution Event

Within five months of starting your case, you should be referred to a dispute resolution event. The purpose is to help you reach agreement on issues. Parties are expected to engage in good faith negotiations and make a genuine effort to resolve all issues in dispute; or where this is not possible, then to reduce the issues in dispute and to record all agreements reached in writing.

The type of dispute resolution will depend on your means and resources. Applications about property will be sent to a conciliation conference or private arbitration. Applications for parenting orders will be sent to a court based conference or private family dispute resolution services.

If an agreement cannot be reached, your case continues along the pathway.

### Compliance and Readiness Hearing

#### At this hearing the court 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 court will want to know why. The court will want to know details about all issues in dispute and what evidence will be used. Make sure you are prepared. Your case will be set a date for the trial to begin

### The trial

The trial is the final hearing, where all parties present their evidence and have it examined.

The court aims to complete family law cases within 12 months of them starting.

# Chapter four – Children

For words in bold see What do these legal words mean?

The principles of children’s rights and parenting obligations are set out in [Part VII (seven) of the Act](http://www.comlaw.gov.au/Details/C2014C00355). 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.

### Important sections of the Act to read are:

### [Section 60B](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60b.html) – The purpose of Part VII

## [Section 65C](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s65c.html) – Who may apply for a parenting order

## [Section 60CA](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60ca.html) – Child's best interests paramount consideration in making a parenting order

## [Section 60CC](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) – How a court determines what is in a child’s best interests

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. To decide this, the court looks at the factors in section 60CC of the Act.

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

When making a parenting order, the court must look at the following considerations:

* What arrangements promote the safety of the child or their carer from harm. Harm includes being physically or psychologically hurt, being neglected or seeing family violence.
* Child’s views – the court will look at how mature the child is and how much they understand. Children do not have to express views if they do not want to.
* The developmental, psychological, emotional and cultural needs of the child.
* The capacity of each parent or carer to provide for the child’s developmental, psychological, emotional and cultural needs.
* Where it is safe to do so, the benefit to the child of having a relationship with the child’s parents and other people important to the child.
* anything else the court thinks relevant to the child’s particular situation.

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 all these matters in deciding the children’s best interests under [section 60CC(4)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) of the Act.

## Preparing your case

Look up [section 60CC](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) 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**](#affidavit).

See Chapter seven – Affidavits. Other important sections of the Act are [section 60B](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60b.html) (which explains the best interests of the children) and [section 65C](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s65c.html) (who may apply for a parenting order). Read these to prepare your case.

When the court compares the Act to the relevant facts of each case, it must also consider other decisions made by [**judges**](#judge). 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 [Federal Circuit and Family Court of Australia website](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home) or [Austlii website](http://www.austlii.edu.au/).

See [Where to get help](#_Where_to_get).

## Applying for 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 letter, 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 [section 64B](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s64b.html) of the Act for information on what can be included in a parenting order.

When the court makes a parenting order, it is guided by what is in the bests interests of the child, taking account of the [section 60CC](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) considerations.

The court can decide to make parents jointly responsible for decisions about their child’s long-term welfare (such as education, religious and cultural upbringing, health, name and significant changes to living arrangements). Alternatively, the court can decide to make one parent solely responsible for all or some of these important decisions.

Where there is an order in place for joint decision making, then parents must consult with each other and make a genuine effort to agree as to long term decisions – but there is no requirement that the decision be made jointly.

There is no automatic right for parents to have equal time with their child. It is open to the court to consider equal time arrangements or arrangements that give substantial and significant time with a child to a parent, in accordance with the child’s best interests.

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.

In certain circumstances, some parenting orders 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**](#file)to make a decision or interim order. Only in exceptional circumstances will the court hear [**evidence**](#evidence)from you and your [**witnesses**](#witness).

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**](#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 two – Parenting order examples 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 Victoria Legal Aid’s website 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](#familyconsultant)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**](#costs).

Read [Independent Children’s Lawyer](https://www.fcfcoa.gov.au/fl/children/icl) on the Federal Circuit and Family Court of Australia website for more information.

## 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.

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

The judge may ask to speak with the children. This does not happen very often. The court may direct that the [**independent children’s lawyer**](#independentchildrenslawyer)and family consultant be there too, when the child meets the [**judicial officer**](#judicialofficer). 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 114UB](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s114ub.html) 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. See Costs in Chapter five – Property.

# Chapter five – Property

For words in bold see What do these legal words mean?

Property includes [**assets**](#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 Family Law Act applies to both married couples (same sex or opposite sex) and couples in a de facto (same sex or opposite sex) relationship. Different sections in the Act apply to each relationship type.

Decisions about property and spousal maintenance for married couples are guided by Part VIII (eight) of the Act. Important sections to know are:

* [Section 80](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s80.html) – General powers of court – sets out the property and spousal maintenance orders the court can make for married couples.
* [Section 72](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s72.html) – Right of spouse to maintenance
* [Section 75(2)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s75.html) – Matters to be taken into account in relation to spousal maintenance
* [Section 79](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s79.html) – property adjustment orders

Decisions about property and spousal maintenance for de facto couples are guided by are guided by Part VIIIB of the Act. Important sections to know are:

* [Section 90SS](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90ss.html) – General powers of court – sets out the property and spousal maintenance orders the court can make for de facto couples.
* Sections [90SE](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90se.html) and [90SF(1)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sf.html) – Right of de facto spouse to maintenance
* [Section 90SF(3)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sf.html) – Matters to be taken into account in relation to de facto spousal maintenance
* [Section 90SM](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sm.html) – property adjustment orders

## 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**](#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 have passed, you must get permission of the court to file your property and/or spousal maintenance application.

De facto partners must file their property and/or spousal maintenance application within two years of the relationship ending. If two years have passed, you must get permission of the court to file your property and/or spousal maintenance application. The court will only do this if there is good reason.

## Interim orders

The court also makes [**interim**](#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**](#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**](#costs). Get legal advice first.

## Third parties

The court 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**](#serve)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 de facto former couples (including same-sex). Get legal advice.

## Bankruptcy

If you have a family law case and you go bankrupt, the Federal Circuit and Family Court of Australia can deal with your bankruptcy. Bankruptcy can be dealt with at the same time as property or spousal maintenance. It does not 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 or defacto relationship breaks down.

The court generally applies a four-step process:

* identify and value the property of the parties
* decide if a property settlement order is needed for a just and equitable (fair) outcome
* take into account the contributions made by the parties to the property (see [section 79 (4)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s79.html) of the Act – for married couples or [section 90SM (4)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sm.html) of the Act – for de facto couples)
* consider the list of factors outlined in [section 79(5)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s79.html) of the Act – for married couples or [section 90SM(5)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sm.html) of the Act – for de facto couples.

### 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 Chapter five – Property 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**](#swear)or [**affirm**](#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 [the Federal Circuit and Family Court of Australia website](https://www.fcfcoa.gov.au/fl/pubs/superannuation) along with other information about the superannuation laws.

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

**Pets**

Family pets are dealt with differently from other property and outside of the usual four step process used in a property settlement case.

A family pet is an animal kept primarily for companionship. It does not include an assistance animal, or an animal kept as part of a business, for agricultural purposes or for use in laboratory tests or experiments. Animals that are not companion animals can be dealt with as any other type of property interest.

The Family Law Act has a list of factors the court must consider for orders dealing with a companion animal. These are different to the considerations applicable to other types of property. These include considering:

* any history of actual or threatened abuse towards a companion animal
* any attachment by a party or a child of the relationship to the companion animal
* the ability of each party to care for the companion animal in the future.

The courts have broad discretion to assess and weigh the factors in the list.

See [Where to get help](#_Where_to_get).

### Step 2 – Is it just and equitable to make an order?

In most family law property cases it will be easy to convince the court that an order is needed to do justice and equity. Usually, separation and ending of the relationship should mean it is just and equitable for all parties that their property is divided. Once satisfied an order is needed, the court must consider if the orders you are asking for are fair for both of you.

### Step 3 – 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.

The matters to be taken into account in alteration of property interests are set out in [section 79(4)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s79.html) for married couples and in [section 90SM(4)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sm.html) for de facto couples. The matters are essentially the same regardless of whether a couple are married or de facto.

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

* the financial contributions made by or on behalf of either party or a 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 or de facto relationship but is no longer owned by the parties
* any non-financial contributions made directly or indirectly by or on behalf of either party or a child to the 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 or de facto relationship but is no longer owned by the parties
* any contribution made by either party to the welfare of the family, including being a home maker or parent
* the effect of any family violence perpetrated by one party on the other party to the marriage or defacto relationship.
* the effect of any proposed order upon the amount of money either party to the marriage or de facto relationship can earn
* any other order made under the Act affecting either party or children of the marriage or de facto relationship
* any child support under the [Child Support (Assessment) Act 1989](http://www.comlaw.gov.au/Details/C2015C00033) that a party to the marriage or de facto relationship has provided, is to provide or might be liable to provide in the future, for any children of the marriage or de facto relationship.

### Step 4 – Current and future circumstances

After taking into account the contributions made by the parties, the court then looks at a range of factors relating to the current and future circumstances of each party. These include:

* the effect of any family violence perpetrated by one party on the other party to the marriage or defacto relationship
* The effect of any material wastage caused by one party to the assets or resources owned jointly by both parties or separately
* how much you and the other person can earn in the future
* your 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 [section 79(5)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s79.html) for married couples and [section 90SM(5)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sm.html) for de facto couples, and look at the factors that are relevant to your case.

See Step 3 – Contributions towards the property.

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.

## 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**](#applicant)and the [**respondent's**](#respondent)ability to pay.

See [section 72](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s72.html) for married couples and [section 90SF(1)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sf.html) for de facto couples.

There are a number of other sections under [Parts VIII (eight) and VIIIB of the Act](http://www.comlaw.gov.au/Details/C2014C00355) that may be relevant to this type of case. Most law libraries have a copy of the Act or you can see it on [the Federal Circuit and Family Court of Australia website](https://www.fcfcoa.gov.au/lawyers/lawyers/legislation).

See [Where to get help](#_Where_to_get).

To see examples of general spousal maintenance orders and property orders (interim and final), see Appendix three – General property order examples.

## 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 114UB](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s114ub.html) of the Act for when this might happen.

See Costs in Chapter four – Children

# Chapter six – Preparing for a trial or hearing

For words in bold see What do these legal words mean?

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 Federal Circuit and Family Court of Australia is called the ‘trial’.

## 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**](#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**](#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 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**](#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.

### Division 12A cases

If your case is being run using Division 12A, the [**judge**](#judge)decides:

* the evidence to be used and how the court uses it
* the documents to be [**filed**](#file) or [**served**](#serve) by either party
* the witnesses to be used, the issues that the witnesses can give evidence on and when and how 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**](#subpoena) are to be issued, the documents (or [**witnesses**](#witness)) 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**](#affidavit). Expert witnesses also give their evidence by affidavit in most cases. Evidence by other witnesses is given by affidavit wherever possible, or else 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’ or ‘directions hearing’ (a pre-trial court meeting).

It may strengthen your case if you use the rules of evidence. For example, the rules stop a person telling the court about something they did not hear or see but were only told about by someone else. This is called the law against hearsay evidence. Get legal advice.

See Some important rules about evidence.

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)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s69zt.html) 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.

## 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'. The common types of inadmissible evidence are listed below:

### Hearsay evidence

Hearsay is something you heard from someone else that you did not see or hear for yourself. Usually, you cannot rely on hearsay in your evidence to the court. So, for example, 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. Evidence about a conversation might be allowed to work out the time and place of an event or why a person acted in such a way. So, you can say that a conversation took place, but not what was said. Also, hearsay can be allowed in cross-examination. See Chapter nine – The trial. 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. One exception to this is the evidence of an expert, who has qualifications or experience that they use to give an opinion. An example might include a psychologist or forensics expert.

### Character evidence

Usually evidence used to harm a witness is inadmissible. 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 relevant to the current case, is not usually admissible. However, you may be allowed to use evidence that shows a pattern of behaviour in certain circumstances. For example, you may be able to show evidence of previous incidents of family violence if violence is an issue in your case. Get legal advice.

### Legally privileged information

Confidential information that you have given to or got from your lawyer, including negotiations to settle the case, are inadmissible. Things said at mediation or in family dispute resolution are inadmissible.

Confidential information may 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. If you use an expert witness, it needs to be included in an affidavit.

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 and the experts may have to meet each other.

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

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

# Chapter seven – Affidavits

For words in bold see What do these legal words mean?

In most family law cases, the main way of giving [**evidence**](#evidence)to the court is by a document called an [**affidavit**](#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.

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**](#party)prepare their case. It also means less surprises in the other side’s case.

The law about preparing and using affidavits in the Federal Circuit and Family Court of Australia is in the [Family Law Act](http://www.comlaw.gov.au/Details/C2014C00355) and the [Rules](http://classic.austlii.edu.au/au/legis/cth/num_reg/fcafcoalr2021202101197559/) made under the Act. The court has an affidavit form. You can download this from the court’s [website](https://www.fcfcoa.gov.au/forms/affidavit) or you can call the court at **1300 352 000**. The court will post it out to you.

You may need to read the practice directions made by the court. Practice directions are court guidelines to help cases move through the court quickly. Because practice directions change, check them from time to time. These are also available from the court’s [website](https://www.fcfcoa.gov.au/resources/practice-directions).

## 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**](#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**](#witness)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 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

Different rules exist about drafting affidavits in interim matters. For Division 2 matters, the affidavit must be no more than 10 pages in length and contain no more than five annexures. For Division 1 matters, the affidavit must be no more than 25 pages in length and contain no more than 10 annexures.

## 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**](#swear)or [**affirm**.](#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 may also be ordered to pay some or all of the other party’s [**costs**](#costs)if you knowingly make a false statement or [**allegation**](#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. This may affect your credibility overall. You can be ordered to pay costs if the other [**party**](#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 court has an affidavit form for you to use. You can download this from the court’s [website](https://www.fcfcoa.gov.au/forms/affidavit) or ask the court to send the form 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 for which party the document is being filed.

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.

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 \_\_\_\_\_\_\_\_\_ 20 \_\_ 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’.

Annexures can also be subject to the rules of evidence, just like the contents of your affidavit.

There are no restrictions on what kinds of affidavits can have annexures attached. However, in Division 2 cases in interim matters, affidavits can be no more than 10 pages in length and must not have more than five annexures attached. In Division 1 cases in interim matters, affidavits can be no more than 25 pages in length and must not have more than 10 annexures attached.

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 20 \_\_ ’.

**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.

## Contents of an affidavit

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

### Children’s issues

## 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:

* I am the wife/husband in these proceedings
* I was born in Melbourne on 1 April 1970, and am now \_\_\_\_ years old. I am in good health
* the wife/husband was born in Ballarat on 10 June 1973 and she/he is in good health
* the wife/husband and I started living together in approximately June 1995
* we were married at St Albans on 20 December 2000 (OR: We have never been married)
* there are two children of the marriage (relationship): Samuel Ben Johnson, aged 12, born at St Albans on 29 November 20\_\_\_ , and Susan Mary Johnson aged 10 , born at St Albans on 11 November 20\_\_\_
* 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
* the wife/husband and I separated on 1 January 2005, 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
* 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
* explain any other needs the children have, such as medical treatment and other special needs
* mention any other issues of concern 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 – if safe to do so
* 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](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) 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

When making parenting orders, there is no automatic assumption that both parents should have joint responsibility for making decisions about their children. It all depends on what is in the best interests of the children. If the court does order joint decision making happen then 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 day to day decisions, for example, what the child eats or wears.

In high conflict families, the court could decide it is best for the children that one parent have sole parental responsibility for all or some of the important decisions about the children’s welfare.

You need to say in your affidavit if you:

* Want all long‑term issues to be decided together or only by one parent, and if so then which parent. You must have reasons to ask this. You should outline this in your affidavit.
* 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 joint parental responsibility for the children’.

## Parenting time arrangements

Which parent children should live with and spend time with are separate decisions from whatever decision the court reaches about allocating parental responsibility. There is no automatic right that children should spend equal time between their parents. The court must look at what is in the children’s best interests in considering parenting time arrangements. It is open to the court to consider equal time arrangements or other arrangements that give substantial and significant time to a parent or no time at all, according to what is best for the children.

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

Children’s time with a parent can be unsupervised or supervised. That time can include weekdays, weekends, holidays, being involved in the children’s daily routines and spending special days or events together.

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](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) 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 – any other people besides the parents who would be involved in supervision.
* 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](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html) 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 should include the following information:

* 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 Step 3 – Contributions towards the property in Chapter five – Property)
* any important sums of money like savings, gifts, redundancies, compensation payouts and inheritances, and how these were used
* how much money you expect to earn in the future
* any child support payments being made or received
* the list of factors under [section 79(5)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s79.html) of the Act – for married couples; or [section 90SM(5)](https://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s90sm.html) of the Act – for de facto couples (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

For words in bold see What do these legal words mean?

When preparing for your case, you may need to use [**evidence**](#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**](#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**](#disclose)or discovery. You must begin sending information before you put in your application for court orders. This obligation continues until [**final orders**](#finalorders)are made.

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

You can prepare by thinking about what evidence you need, including [**witnesses**](#witness), 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**](#judge) why you want to use this evidence.

See [section 69ZX](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s69zx.html) 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**](#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**](#party)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.

The Federal Circuit and Family Court of Australia has more information on its website about the requirement for disclosure. Read [Duty of Disclosure](https://www.fcfcoa.gov.au/fl/pubs/duty-disclosure) and also ‘Disclosure and exchange of correspondence’ in the [Before you file – pre-action procedure for financial cases](https://www.fcfcoa.gov.au/fl/pubs/pre-action-financial) prescribed brochure.

The [Family Law Rules](http://www.comlaw.gov.au/Details/F2015C00192) say that parties have an ongoing duty to [**disclose**](#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**](#assets), income and liabilities and a list of any relevant documents you have.

Read [rule 6.05](http://classic.austlii.edu.au/au/legis/cth/num_reg/fcafcoalr2021202101197559/s6.05.html) and [rule 6.06](http://classic.austlii.edu.au/au/legis/cth/num_reg/fcafcoalr2021202101197559/s6.06.html) of the Family Law Rules to find out what sort of things you have to disclose.

In property settlement matters, the Family Law Act specifies that each party to a family law case has a duty to give full and frank disclosure of all information **relevant** to an issue in dispute between them, in a timely manner. This duty commences from when you start preparations to begin your case and continues until your case ends.

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**](#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 - Commonly used forms](#_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.

## 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 - Commonly used forms](#_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, you must get permission from a [**registrar**](#registrar)before applying to the court for a subpoena to be issued.

If you are representing yourself, then you can get up to five subpoenas issued.

If you want to subpoena files from the Department of Families, Fairness and Housing, you first have to first get the court’s permission (seek leave).

The courts charge fees for filing a subpoena. An exemption from payment of this filing fee applies if you hold certain government concession cards. Ask the court staff for more information. Always check with the court registry for changes in fees.

### 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

* 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
* 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**](#service)needs to be completed and [**filed**](#file). This is an affidavit which tells the court that the subpoena has been served.

### 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 final 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**](#allegation)of unlawful disclosure of information. Serve the subpoena in plenty of time so the witness can organise to be there.

# Chapter nine – The trial

For words in bold see What do these legal words mean?

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

## Before the trial

You get a date for final trial after all [**interim**](#interim)applications have been finalised and you have participated in each pre‑trial procedure.

See 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.

## What happens at a trial?

The judge will tell you who does what and when. Usually, a case will proceed in this order:

* the applicant speaks first and makes their opening address
* the applicant gives their evidence in chief by calling on their first witness. Usually this will be the applicant
* the respondent cross‑examines the witness
* the applicant gets the chance to re‑examine the witness to clarify any evidence that is unclear or incomplete
* the applicant calls their next witness if they have one. This witness gives evidence, they are cross‑examined, and re‑examined if necessary. This process is repeated until all of the applicant’s witnesses have given evidence
* the respondent gives an opening address. They call witnesses to give evidence that is cross‑examined and re‑examined like the applicant’s witnesses
* the applicant and respondent give closing addresses.

## Opening address

An opening address is a statement to the court made by each party at the beginning of a court case. The [**applicant**](#applicant)and [**respondent**](#respondent)(and [**independent children’s lawyer**](#independentchildrenslawyer), 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 case.

This tells the court what is in dispute between the [**parties**](#party)and the [**evidence**](#evidence)each party would like to use.

## Evidence in chief

Evidence in chief is the evidence a party wants the court to consider. It is included in your [**affidavit**](#affidavit) and your witnesses’ affidavits. It sets out your side of the story. You can only give evidence in person, without an affidavit, in limited circumstances.

When it is your turn to give evidence, you can ask the judge if you can take a copy of your affidavit, and pen and paper, with you. You will then take an ‘oath’ or ‘affirmation’, which is where you promise to tell the truth. Remember that everything you say in court will be recorded.

If you want to change anything in your affidavit, such as mistakes or typing errors, tell the court now. 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**](#serve)it on all other parties. The court generally allows only one affidavit per witness. If things change after the new affidavit is served, you may be allowed to give this information yourself from the witness box.

You must go through this process with all your witnesses. Ask each witness at the beginning of their evidence if they remember affirming their affidavit, and if it is true and correct.

## Cross‑examination

Cross‑examination is where you get to ask the other party and the other party’s witnesses about their evidence. Your questions should try to 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. Bring a copy of the letter to court.

### Ban on personal cross examination

For any family law proceedings where there are allegations of family violence, the court may say there is a ban on personal cross-examination by a party to the case. If this applies, then cross-examination will need to be conducted by a lawyer. A person can organise their own lawyer or, if the person is unrepresented, they can apply to the Commonwealth Family Violence and Cross Examination of Parties Scheme for a lawyer. All parties in the family law proceedings will need to have a lawyer for cross-examination to occur.

For more information and how to apply for funding under the scheme, read the VLA website: [commonwealth family violence and cross examination scheme](https://www.legalaid.vic.gov.au/commonwealth-family-violence-and-cross-examination-parties-scheme)

### 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.

Some key tips are:

* prepare questions about the areas of weakness, and differences between each affidavit
* 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**](#consentorders)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’s number. In cross‑examining Ms Jones, he might say:

**Question example**

Now on 6 January 2022, you went to the Federal Circuit and Family Court at Melbourne, didn't you?

**Question example**

You had a lawyer representing you on that day, isn’t that right?

**Question example**

It is correct that we signed consent orders written by your lawyer, isn't it?

**Question example**

Before signing the consent orders, you read them carefully didn't you?

**Question example**

It is also true that you were given a copy of the consent orders, isn’t it?

**Question example**

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?

**Question example**

It is correct that your home number is (03) 9123 4567, isn’t it?

**Question example**

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?

**Question example**

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?

**Question example**

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

Re‑examination happens after witnesses have been cross‑examined. This gives the witness a chance to explain things further that came up during cross‑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) give the court a summary of the main points and evidence of their case.

In your closing address try to convince the court why it should make the orders you want. You should emphasise the positive aspects of your case. Refer to the relevant parts of the [Family Law Act](http://www.comlaw.gov.au/Details/C2014C00355) and any case law that supports your argument. 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.

**Division 12A cases**

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.

The judge decides:

* what evidence will be used and how the court will use it
* what documents must be filed or served by either party
* which witnesses will be used, the issues they can give evidence on and when and how they can do so
* the order of questions and how they are asked
* whether subpoenas will be issued and the documents (or witnesses) to be subpoenaed.

In all cases, evidence is given by affidavit (including evidence from expert witnesses). Evidence by other witnesses can be given in person or by telephone or video link if the judge allows it.

During the hearing you will have the chance to give evidence, cross‑examine and re‑examine just as would in formal proceedings. You might not make an opening address but you will usually make a closing address to sum up your case.

# Chapter ten – On the day

For words in bold see What do these legal words mean?

## 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.

All[**witnesses**](#witness)must wait outside the court room until they are called in to give [**evidence**](#evidence)**.** The court officer will call out their names when they are needed. Make sure your witnesses are at court when needed.

## Going into court

Some things to remember when you go into the court room:

* look neat and tidy
* do not wear a hat or sunglasses on your head
* do not eat or chew gum
* you can have a support person with you inside the court room but no children under 18
* acknowledge the [**judge**](#judge) or **senior judicial** [**registrar**](#registrar)by bowing your head to them as you enter the court room. The judge or registrar sit above the court, which is called the ‘bench’
* when your case is called, go to the bar table. This is the table in front of the bench. Bags should be placed on the floor. You are allowed to have a support person sit next to you. Tell the court your name and whether you are the [**applicant**](#applicant)or the [**respondent**](#respondent). The applicant goes first
* stand when the [**judge**](#judge) or **senior judicial** [**registrar**](#registrar) talks to you
* stand when you talk to the [**judge**](#judge) or senior judicial registrar
* refer to the [**judge**](#judge) as ‘your honour’, the **senior judicial** [**registrar**](#registrar) as ‘sir/madam’ or ‘senior judicial registrar’
* never talk when someone else is talking at the bar table
* sit down when someone else is talking at the bar table.

**Note:** In Division 12A cases, the [**judge**](#judge) 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 judgment is to be ‘handed down’ (made) in court.

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

# Chapter eleven – Once an order is made

For words in bold see What do these legal words mean?

## Accessing court orders

The court does not send out hard copies of court orders to parties involved in family law cases. Orders made by the court in your family law case (except appeals and consent orders) will be available from the Commonwealth Courts Portal (the Portal). This is an online service available from [www.comcourts.gov.au](https://www.comcourts.gov.au/pip/saml/authn_request?SigAlg=http%3A%2F%2Fwww.w3.org%2F2000%2F09%2Fxmldsig%23rsa-sha1&SAMLRequest=eJyFkMFuwjAQRO98ReR7gmNIQiwMoq2qItEKQeihl8o4C7WU2KnXQf38pkClqgcy152d0Zvp%2FKuughM41NYIEkeUBGCULbU5CrIrHsMJmc%2BCq6Yo66rhi9Z%2FmA18toA%2B6P4N8vNBkNYZbiVq5EbWgNwrvl08rziLKG%2Bc9VbZigSD4IaWD4LsywMFleRjmYzUmCml8jzJRinLZJbSCWSgIIX40BP1%2BovFfrButyK2sDTopfGdnzIW0ixkcUEZH8Wc0beegPWV7k6by3b%2Fpoj%2BTrG%2FmJA%2FFcU63ECpHSjf33DSJbiXLk6QRmKPf4EIznf899ZgW4PbgjtpBbvNSpAhoh1W9qjNu1RIhrPBN8HMhiI%3D&Signature=H5JYWYJ90zijM5yk9h6mjQ%2BSzdyziFU7%2B2QLAovksO4ZphHLUSWDcjxJibZF%0AgGUK9ikM3xEqwzm6nnvWSHZ7gQ%3D%3D%0A&ByName=pas)

To access your orders, you will need to register with the Portal. For information on how to register, see the court [website](https://www.fcfcoa.gov.au/hdi/register-CCP).

## Changing court orders

You may be able to change orders the court has made. If you and the other [**party**](#party)agree on changes, you can [**file**](#file)[**consent orders**](#consentorders)to change them. If it is a parenting order, you need to tell the court if there have been [**allegations**](#allegation)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**](#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.

### Using a parenting plan

If you have a parenting order that 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 **senior judicial** [**registrar**](#registrar)made the decision, you can apply for a review of the decision. The kinds of decision a registrar can make are set out in clause 2 of schedule 4 to the Rules. Read chapter 14 of the Rules and the order very carefully.

You have 21 days from the date the order is made. The decision is reviewed by a [**judge**](#judge).

### 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. Chapter 13 of the 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 Division two [**judges**](#judge)are generally heard by a single judge of Division one. The Chief Justice can decide that an appeal should be heard by the Full Court (three or more judges).

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**](#judicialofficer).

## 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 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](https://www.legislation.gov.au/Details/F2021L01197) if you are considering enforcement options.

Chapter 11 of the Family Law Rules sets out two ways for enforcing orders. Part 11.1 deals with the enforcement of financial orders. Part 11.2 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. You apply using an ‘Application – Enforcement’ form and an [**affidavit**](#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**](#serve)on the other party.

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

A **senior judicial** [**registrar**](#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**](#assets).

See Step 1 – Identify and value the property of the parties in Chapter five – Property.

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**](#judge). The judge 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.

### 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 proceeding’ 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:

* the breaching of an order was not proven – [s. 70 NAA Subdivision C](http://www.comlaw.gov.au/Details/C2014C00355)
* the breaching was proved but there is a reasonable excuse – [Subdivision D](http://www.comlaw.gov.au/Details/C2014C00355)
* a less serious breach happened without a reasonable excuse – [Subdivision E](http://www.comlaw.gov.au/Details/C2014C00355)
* a more serious breach happened without a reasonable excuse – [Subdivision F](http://www.comlaw.gov.au/Details/C2014C00355).

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 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**](#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)](http://www5.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s69zt.html), 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

For free information about the law and how we can help you:

* visit our website [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
* use our Legal Help Chat on the website, Monday to Friday, 8 am to 5 pm, excluding public holidays
* phone Legal Help on 1300 792 387 Monday to Friday, 8 am to 5 pm, excluding public holidays.

### Do you need help phoning us?

### Translating and Interpreting Service

Tel: 131 450

### National Relay Service

TTY users: phone 133 677

Speak and Listen users: phone 1300 555 727

Internet relay users: https://nrschat.nrscall.gov.au

SMS relay: 0423 677 767

### Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45am to 5.15pm.
See the back cover for office locations.

All offices are accessible to people with a disability.

## Other legal services

### Federation of Community Legal Centres

Find your nearest community legal centre

[www.fclc.org.au](http://www.fclc.org.au)

### Law Institute of Victoria

Referral to a private lawyer

Phone: (03) 9607 9550

[www.liv.asn.au](http://www.liv.asn.au)

### Legal Services Board of Victoria

For complaints against lawyers

Phone: (03) 9679 8001

Email: consumerenquiry@lsbc.vic.gov.au

[www.lsbc.vic.gov.au](http://www.lsbc.vic.gov.au)

### Victorian Aboriginal Legal Service

Phone:(03) 9418 5999 or 1800 064 865for country callers

[www.vals.org.au](http://www.vals.org.au )

## Courts

### Federal Circuit and Family Court of Australia

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

Phone: 1300 352 000

[www.fcfcoa.gov.au](http://www.fcfcoa.gov.au)

305 William St, Melbourne VIC 3000

53–55 Robinson St, Dandenong VIC 3175

### Magistrates’ Court of Victoria

Contact your nearest court: go to the website and search: [find a court](https://www.mcv.vic.gov.au/going-court/find-court)

[www.mcv.vic.gov.au](http://www.mcv.vic.gov.au )

## Other useful contacts / More legal information

### Australian Federal Police

AFP switchboard phone: (02) 5126 000

Non-urgent assistance phone: 131 444

[www.afp.gov.au](http://www.afp.gov.au)

### Services Australia (Centrelink)

Centrelink Families: 136 150

Centrelink Multilingual phone service: 131 202

[www.servicesaustralia.gov.au/centrelink](http://www.servicesaustralia.gov.au/centrelink)

### Services Australia (Child Support)

Child Support Enquiry line: 131 272

[www.servicesaustralia.gov.au/separated parents](https://www.servicesaustralia.gov.au/separated-parents)

### Court Network for information, support and referral service

Phone: 1800 571 239

[www.courtnetwork.com.au](https://courtnetwork.com.au/)

### Victorian Registry of Births, Deaths and Marriages

Phone: 1300 369 367

[www.bdm.vic.gov.au](http://www.bdm.vic.gov.au)

### Passports office (Department of Foreign Affairs and Trade)

Phone**:** 131 232

[www.passports.gov.au](http://www.passports.gov.au)

### Family Relationships Online

Advice line: 1800 050 321

[www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

### Commonwealth Attorney Generals Department

[www.ag.gov.au](https://www.ag.gov.au/)

### Department of Justice Victoria

[www.justice.vic.gov.au](http://www.justice.vic.gov.au)

### Austlii (legal research)

[www.austlii.edu.au](http://www.austlii.edu.au)

## Family dispute resolution and other education services

### Family Relationship Centres

### To locate your nearest centre contact the Family Relationship Advice Line on 1800 050 031

For information go to: [family relationship centres](https://www.familyrelationships.gov.au/talk-someone/centres)

### Family mediation and dispute resolution centres

Contact the Family Relationship Advice Line on: 1800 050 031 to locate your nearest family mediation centre

For information go to: [family mediation and dispute resolution centres](https://www.familyrelationships.gov.au/separation/family-mediation-dispute-resolution)

### Lifeworks

Lifeline: 1300 13 11 14

<https://wellbeing.lifeworks.com/au/>

### Relationships Australia

1300 364 277. Telephone to find your nearest office location

[www.relationships.org.au](http://www.relationships.org.au)

### Centacare Catholic Family Services

Client services: (08) 8215 6700

Email: enquiries@centacare.org.au

[www.centacare.org.au](https://centacare.org.au/)

## Family violence and support services

Emergencies: call Police on ‘000’

Djirra Family Violence Prevention and Legal Service: 1800 105 303

Domestic Violence Resource Centre Victoria: (03) 9486 9866

Intouch Multicultural Centre Against Family Violence: (03) 9413 6500

Men’s Referral Service: 1800 737 732

Mensline: 1300 789 978

Kids Help Line: 1800 551 800

Parentline Victoria: 132 289

Salvation Army Crisis Centre: 1800 825 955

Sexual Assault Crisis Line: 1800 806 292

Victims of crime helpline: 1800 819 817 or text 0427 767 891

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

Women’s Domestic Violence Crisis Service: contact via email: admin@wcssi.org.au

## Inside back cover

### Useful Victoria Legal Aid resources

**To order publications**

We have free booklets about the law in English and other languages.

Visit www.legalaid.vic.gov.au to order or download booklets.

Call (03) 9269 0234 and ask for Publications to find out more.

**Our public law library**

Open Monday to Friday, 9 am to 5 pm

570 Bourke Street

Melbourne VIC 3000

#

## Victoria Legal Aid

For free information about the law and how we can help you, visit our website www.legalaid.vic.gov.au

For help with legal problems call Legal Help on **1300 792 387**

For business queries, call **(03) 9269 0234**

### Offices

Melbourne

### Suburban offices

Broadmeadows

Dandenong

Frankston

Ringwood

Sunshine

### Regional offices

Bairnsdale

Ballarat

Bendigo

Geelong

Horsham

Mildura

Morwell

Shepparton

Warrnambool

## Publication orders

To download or order our publications in English or other languages go to www.legalaid.vic.gov.au

If you need help ordering online please call (03) 9269 0234 and ask for Publications or email cle@vla.vic.gov.au

# Appendix one - Commonly used forms

All court forms can be downloaded from the court [website](https://www.fcfcoa.gov.au/fl/forms) (see links below).

**Note:** The standard court forms will change. Check the court website for the latest forms.

| **Topic** | **Form** |
| --- | --- |
| Divorce | [Application for divorce](https://www.fcfcoa.gov.au/fl/hdi/apply-for-divorce) |
| Application for orders by consent | [Application for consent orders](https://www.fcfcoa.gov.au/fl/forms/app-consent-kit) |
| Other application (non‑urgent)\* | [Initiating application form](https://www.fcfcoa.gov.au/fl/forms/initiating-app-kit)* children or property cases
* declaration of validity of marriage
* decree of nullity
* maintenance
* child support (application or appeal)
 |
| Urgent or interim application\* | [Application in a Proceeding](https://www.fcfcoa.gov.au/forms/app-proceeding)Interim orders (children or property)* Enforcement orders (children or property)
* Child recovery
* Review of registrar’s decision
* Summons
* Leave to appeal
 |
| Affidavit | [Affidavit](https://www.fcfcoa.gov.au/forms/affidavit)[Affidavit – Non‑filing of family dispute resolution certificate](https://www.fcfcoa.gov.au/fl/forms/affidavit-non-filing) |
| Financial statement | [Financial statement](https://www.fcfcoa.gov.au/fl/forms/financial-statement-kit) |
| Service of documents | [Affidavit of service](https://www.fcfcoa.gov.au/forms/affidavit-service) [Acknowledgement of service](https://www.fcfcoa.gov.au/forms/acknowledgment-service)[Notice of address for service](https://www.fcfcoa.gov.au/fl/forms/notice-address-service)[Service kit (do‑it‑yourself kit)](https://www.fcfcoa.gov.au/forms/service-kit) |
| Questionnaire | [Parenting Questionnaire](https://www.fcfcoa.gov.au/fl/forms/questionnaire-parenting)[Financial Questionnaire](https://www.fcfcoa.gov.au/fl/forms/questionnaire-financial) |
| Subpoena | [Subpoena](https://www.fcfcoa.gov.au/forms/subpoena)**Note:** Consider whether you need to serve a Notice of non‑party production of documents before your subpoena |
| Notice of child abuse, family violence or other risk | [Notice of child abuse, family violence or risk](https://www.fcfcoa.gov.au/fl/forms/notice-cafvor) |
| Contravention | [Application for contravention](https://www.fcfcoa.gov.au/fl/forms/app-contravention) |
| Contempt | [Application for contempt](https://www.fcfcoa.gov.au/fl/forms/app-contempt) |
| Appeal | [Notice of appeal](https://www.fcfcoa.gov.au/fl/forms/notice-appeal)Application for final orders OR Initiating application form (for child support appeals) |

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

# Appendix two – Parenting order examples

For words in bold see What do these legal words mean?

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

### Examples of wording to use for interim of final orders

That the husband/wife/mother/father/other [**party**](#party)and the \_\_\_\_\_\_\_\_\_\_\_\_\_ shall retain parental responsibility for the child/ren of the marriage: (give full names and dates of birth of each child) and shall make joint decisions in relation to major long term issues in relation to the children.

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.

That the said child/ren live with the \_\_\_\_\_\_\_\_\_\_\_\_\_.

That the \_\_\_\_\_\_\_\_\_\_\_\_\_ spend time and communicate with the said child/ren as follows:

* 1. each alternate week from \_\_\_\_\_\_\_ am/pm on \_\_\_\_\_\_\_\_day to \_\_\_\_\_\_\_ am/pm on \_\_\_\_\_\_\_\_day, beginning on the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_ at \_\_\_\_\_\_\_ am/pm.
	2. 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
	3. 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
	4. for two weeks in a row in the summer school holiday to begin on the \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_ at \_\_\_\_\_\_\_\_ am/pm
	5. 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
	6. 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
	7. 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
	8. at times agreed between the parties on the child’s birthday and if there is no agreement from \_\_\_\_\_\_\_\_ am/pm to \_\_\_\_\_\_\_\_ am/pm
	9. or as otherwise agreed between the parties from time to time

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.

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 child receiving medical attention.

That the parties keep each other informed of any change of address or telephone number within seven (7) days of any such change.

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.

### Example of ‘Departure prohibition order for children’ and ‘recovery order’

That this case be deemed urgent and that all times be abridged.

* 1. 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
	2. 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.

That the court issue a recovery order for the return of the child to husband/wife/mother/other party a person who has a parenting order that provides them with residence for the said child/ren.

* 1. 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:
	2. To find and recover the child/ren: \_\_\_\_\_\_\_\_\_\_\_\_, born \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_, born \_\_\_\_\_\_\_\_\_\_\_\_,and to deliver the said child to the husband/wife/mother/father and the person effecting such recovery agree to be appropriate; and
	3. 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.

That the child be permitted to travel outside Commonwealth of Australia notwithstanding that the [**consent**](#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.

# Appendix three – General property order examples

For words in bold see What do these legal words mean?

## Examples of general spousal maintenance orders

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

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

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*).

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.

# Victoria Legal Aid generic program template

Use this template for generic documents at Victoria Legal Aid to ensure consistency.

## How to best reach your audience

* **Use** [plain-language](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/communications/Pages/our-style-guide.aspx) **and** [accessibility guidelines](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/communications/Pages/making-content-accessible.aspx) for clear and inclusive writing.
* **Use a friendly, conversational tone** to engage your audience and minimise legalese. Use words like ‘we’, ‘our’, ‘you’.
* **Use short and direct sentences to create small paragraphs** – this helps readability and is considerate of readers with lower literacy or dyslexia.
* **Use bullet lists and headings to help readability** – break up large blocks of text and use clear headings to describe sections.
* **Use minimal capitalisation** – don’t capitalise generic references to orders, courts, roles or document sections. Generic titles should be lower case, for instance ‘the manager said’. For more information, see [capitals](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/communications/plain-language-writing-guide/Pages/capitals.aspx).
* **Use heading styles in this doc in sequential order** – for instance, avoid jumping from the Heading 1 to Heading 3. Styles create document structure and help people using assistive technology.
* **Use descriptive text for hyperlinks** – for instance, ‘read our [plain language writing tips](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/communications/Pages/our-style-guide.aspx)’ rather than ‘[click here](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/communications/Pages/our-style-guide.aspx) to read our writing tips’.
* **Avoid unnecessary acronyms** – define any acronyms in the first instance, for example ‘National Disability Insurance Scheme (NDIS)’.
* **Add alternative text to images** – all non-decorative images need an alternative text description. This includes infographics. Right click the image and select ‘Edit Alt Text’. Add a description, for example ‘Photo of two otters swimming’.
* **Avoid using empty lines to create space** – empty paragraph returns can confuse people using assistive technology. If you need extra space, right click text > paragraph properties > change the ‘Above’ and ‘Below’ space.
* **Don’t use tables for layout** – tables should be used for logically presenting data, not for formatting pages. See our [guide on using tables](https://viclegalaid.sharepoint.com/sites/intranet/policiesandprocedures/communications/Pages/making-content-accessible.aspx#e16f96d7a452b4fb9b078029bd7eb9dc9).
* **Contact our Design team early** if you need images
* **Contact our communications teams early** to help coordinate content and news stories across our many channels.