

# How to apply for parenting orders



## Parenting Orders - What are they?

If you and the other parent cannot agree about arrangements for your children, you can apply to the Federal Circuit and Family Court of Australia for Parenting Orders. These orders will cover issues such as:

- Who has parental responsibility for the children
- Who the children live with; and
- Who the children spend time and communicate with, and how and when this occurs.

Parental responsibility involves the power to make decisions about a child's long-term welfare, including their religion, name, health, education and where they live (on a larger scale, not moving within a suburb or locally). Parental responsibility can be shared between parents or be allocated to one.

The court will make decisions in the best interests of the children: this is known as the paramount principle in parenting matters. Best interests involve weighing a number of considerations. The most important considerations are:

- The need to protect children from harm (including neglect, abuse and exposure to domestic violence); and
- Children's right to a meaningful relationship with both parents (if such a relationship is in the children's best interests).

Parents should be aware that protecting children from harm is the most vital concern of the two primary considerations.

Once orders are made, they must be followed or a party may be breaking the law.

Before you apply to court, you must take certain steps or the court may not hear your application. These steps are called 'pre-action procedures'.

## Pre-action procedures: What you must do before you go to court

The aim of the compulsory pre-action procedures is to make sure people have made real efforts to resolve their issue before they apply to the court.

### Step 1: Family Dispute Resolution (or 'mediation')

Family Dispute Resolution ('FDR') encourages people to resolve their own issues quickly, fairly and affordably. Going through court can place significant emotional and psychological stress on parties and their children. It also causes financial strain. Family dispute resolution helps people avoid court and make their own child-focused arrangements.

Before you can ask a court to make Parenting Orders, you will have to get a certificate from a FDR practitioner saying that you have tried mediation with the other party. Even if the other party did not attend the mediation, the practitioner can provide the necessary certificate (a section '60I certificate') to satisfy the court.

In some circumstances, such as when the matter is urgent or it is unsafe for mediation to occur, you can apply to the court for orders without attempting FDR.

### Step 2: Notice of Intention

You must write to the other party letting them know that you intend to apply to the court. This gives them a chance to either negotiate or mediate further with you, as well as keeping them informed of your position and what you will ask the court to do.

Your Notice of Intention should include:

- a description of the issues in dispute
- what orders you will be asking the court to make
- a genuine offer to resolve the issue (ie is a compromise possible, keeping in mind the children's best interests are paramount); and
- a timeframe for the person to reply (allowing them at least 14 days from the date of the letter).

### Step 3: Court action

If the other party does not respond to your Notice of Intention, or negotiations break down after they reply, the next step is to file an application in court. On receiving your application, the court will check that pre-action procedures have been followed.

## Going to Court

To start a court action, you must pay a fee and submit to court ('file') the following documents:

- an Initiating Application (Family Law)

- a section 60I certificate saying that you have attempted FDR (unless you are asking for an exemption, in which case you will file an Affidavit of Non-filing of Family Dispute Resolution Certificate explaining why the court should grant you the exemption)
- a Notice of child abuse, family violence or risk
- a Genuine steps certificate
- a Parenting Questionnaire (if you are not filing an affidavit); and
- if you are asking the court to make interlocutory orders (ie temporary orders that last until final orders are made), an affidavit.

## Disclosure

All parties have a duty of disclosure to the other party. You, and the other party, must exchange any information relevant to the parenting case, such as medical and school reports, letters, photographs or expert reports. The duty applies during pre-action procedures and continues throughout any court action, so any information you may receive you should disclose to the other side until your case is finalised.

The court will require you to sign an undertaking saying that you understand the duty of disclosure and agree to comply. A failure to disclose is serious and may lead to a contempt of court charge, costs being awarded against you or the court dismissing your application.

## Further Information

For more detailed information about parenting arrangements, pre-action procedures and the court process, visit the Federal Circuit and Family Court of Australia's website.

## Where can I get legal advice?

If you need legal advice about a parenting matter, you can contact BCLS on 3162 3282 to organise an appointment. Our full contact details are below.

*Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to Elders past, present and emerging.*

**Bayside Community Legal Service**

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