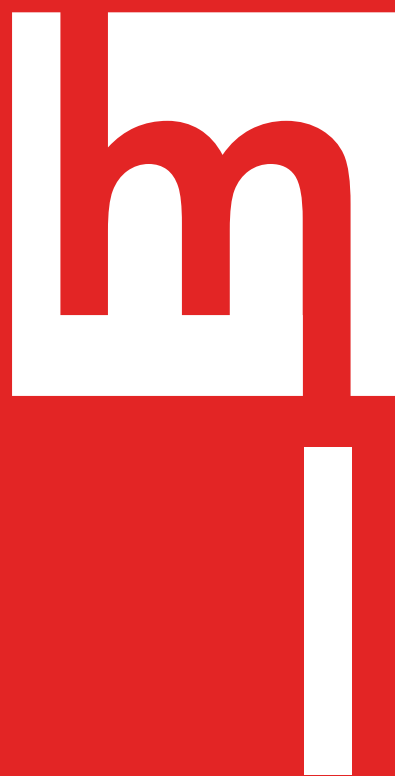


Court Guide

Children and Parenting Disputes



Family Law Children and Parenting Disputes Guide

Disputes regarding parenting arrangements can be highly emotional and deeply stressing for the parents involved.



Court Guide

Children and Parenting Disputes

The process through the Family Court or Federal Circuit Court is often quite daunting if you have had no contact with the law, and in some cases it is even more daunting if you have had previous contact with the Court.

The following is a brief overview of the general steps that a dispute regarding children's arrangements may take at Court.

Disputes regarding arrangements for children are governed by the Family Law Act and are usually made to the Federal Circuit Court, or to the Family Court if there are serious or complicated issues involved.

The Family Court and the Federal Circuit Court buildings are located in Brisbane. Court documents can also be lodged at the Court or on the Court portal online.

A Court application regarding arrangements for children will only be allowed to be started if the parties have attempted to mediate the dispute, except in circumstances involving risk or abuse to children, family violence, urgency or other applicable exceptions.

In most cases it is preferable to resolve a matter by agreement due to the emotional drain, delay, and expense of running a family law court case.

An agreement can sometimes be reached by negotiations directly between the parties or their lawyers.



Mediations can be arranged by lawyers with an accredited mediator to assist the parties. A less costly option is for the parents to arrange a mediation without lawyers at Relationships Australia or the Family Relationship Centre.

If agreement is not able to be reached by negotiation or mediation then the next step is Application to the Court for Orders to be made.

When an Application is made to a Family Law Court to decide Orders, the common steps involved include:-

1. Preparing Court Documents:

An Initiating Application to the Court starts the Court process and a supporting Affidavit by the applicant is required (Affidavits can also be provided by other relevant persons to the child);

If the Application to the Court has been made without mediation occurring, an Affidavit of non-filing certificate of dispute resolution must be filed.

To inform the court of any abuse or violence a Notice of Risk must also be filed with all children's applications.

2. Filing the Application and Affidavits at the Court:

Documents can be filed at the Family Courts in Brisbane or on the Court portal online. An original and 2 copies of the documents are required and a filing fee will usually be payable unless you are eligible for a fee waiver.

3. Service of the Application and Affidavits on the other party to the Application:

Service must be done by personally handing the Court documents to the other party, this is usually done by a process server who specialise in serving documents.

Alternatively documents can be served on the other party's lawyers.

4. The First Court date:

The Court proceedings will not usually be resolved on the first Court date unless the parties can agree on arrangements.



The first Court date is a good opportunity in many cases to see whether an agreement can be made and then have the Court formalise the agreement.

When you appear before the Court the Judge will want to know what the case is about and what each of the parties seeks.

The Court will then make directions regarding the future steps that need to be taken prior to a trial.

The Court may make Interim Orders regarding the children, for example who they will live with and when they would spend time with the other parent.

Interim Orders apply until another Order of the Court is made, sometimes until the end of a trial.

The Court will adjourn the matter to a future Court date to allow any counselling, investigations, or reporting to occur.

5. Referral of the parties for a Family Report, to Counselling, or for further mediation:

At the first Court date the Court may direct that the parties attend with a family consultant for a family report to be prepared. A family report is intended to be an independent opinion of what is in the best interests of the children.

The preparation of a family report involves the parents being interviewed and observed with the children. The children are also interviewed if they are old enough and able to express themselves.

The Court may also direct the parties to attend counselling, education programs or courses.

The Court may generally make any other directions that the Court believes may assist the parties to resolve their dispute or be for the best interests of the children.

6. The Second Court date:

After a family report has been prepared or after the parties have completed any counselling or parenting programs the Court has ordered the possibility of agreement should be explained on the following Court date.



At the second Court date the Judge will ask the parties about the success of any counselling or mediation and/or review the contents of any family report.

The Court may give further directions for the parties to attend to other counselling, mediation, reporting, or programs. Alternatively the Court may set a trial date for the case to be decided. The Court will give trial directions which set a time line for the parties to prepare their case for a trial.

7. Trial directions and preparation:

If the Court lists a trial date, the parties will be given directions including dates for filing any further Court documents including Affidavits.

The issue of trial preparation is very complex and cannot be adequately explained in a brief overview, however generally the parties must ensure that their Affidavits and the evidence that they wish to provide to the Court must be up to date and relevant to their case.

In Family Law proceedings each parent's case and all their evidence must be included in their Affidavits and therefore it is very important to seek legal advice for preparing a case for a trial.

8. Trial:

A family law trial for children's arrangements may take one or more days depending on the complexity of the matter and the number of witnesses to give evidence.

The parents of the children will be cross-examined (asked questions) regarding what is contained in their Affidavits.

The children do not give evidence; their wishes are made known to the Court by the contents of the family report interviews.

The family report writer will usually be called upon to give evidence.

In a trial it is very important that the issues the Court must consider are covered in the evidence given by the parties. For this reason it is greatly preferable in most cases to have a lawyer to ask the correct questions and ensure that the Court hears the important information.



Please do not hesitate to contact one of our family lawyers on 13 58 28 to discuss your matter at an initial free consultation.

9. Judgment:

On some occasions the Court will give a decision immediately at the conclusion of the trial.

However, in many cases the Court does not give a decision on the day of the trial. Sometimes the decision is “reserved” which means the parties are notified in the future when the judgment is ready to be given.

After a Judgement or decision is given by the Court there is sometimes the issue of if either party should pay the other party’s costs, however the general rule in the Family Court is that each party bears their own legal costs.

10. Settlement:

If at any time during the Court process the parties agree on arrangements for the children the Court can make Orders in the terms of the agreement between the parties. The Court will only make the Orders if the Court agrees the terms are in the best interests of the children.

11. Urgent Applications:

Some cases will need urgent applications to be made to a Court, for example if there was a risk of a child being taken from Australia.

In cases of urgency regarding children, immediate legal advice should be sought once the child has been removed from any imminent danger.

The above is only a general example of some of the steps which may be involved in a family law court process regarding children. There are many other steps which may be necessary in individual cases and legal advice specific to your situation is critical.

Each situation in family law is usually different to every other to some degree. Most families are different to each other and children are individuals, and therefore this brief overview is intended only as a basic introduction and not to be relied on in place of legal advice.

The Family Law Act, previous family law cases, and other associated practice directions of the Court contain procedural rules and legal principles that are quite complicated and for this reason it is recommended that the advice of a lawyer is obtained prior to taking your matter to Court.

Our Offices:

IPSWICH

88 Limestone Street
PO Box 359
IPSWICH QLD 4305
T: 07 3816 9555
F: 07 3816 9500

SPRINGFIELD

GE Building Level 1, 6 Yoga Way
Springfield Qld 4300
PO Box 4629
T: 07 3470 3600
F: 07 3470 1300

GATTON

11 William Street
PO Box 116
GATTON QLD 4343
T: 07 5462 1566
F: 07 5462 3087

Our Family Lawyers:

Emario Welgampola | Special Counsel
Ipswich
E: emario.welgampola@mcna.com.au

Brock Harm | Associate
Gatton
E: brock.harm@mcna.com.au

Charmagne Haidley | Associate
Ipswich
E: charmagne.haidley@mcna.com.au

Daniel Brownlie | Associate
Gatton
E: daniel.brownlie@mcna.com.au



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