

RELATIONSPACE

AN INTERACTIVE PROGRAM FOR SEPARATING PARENTS

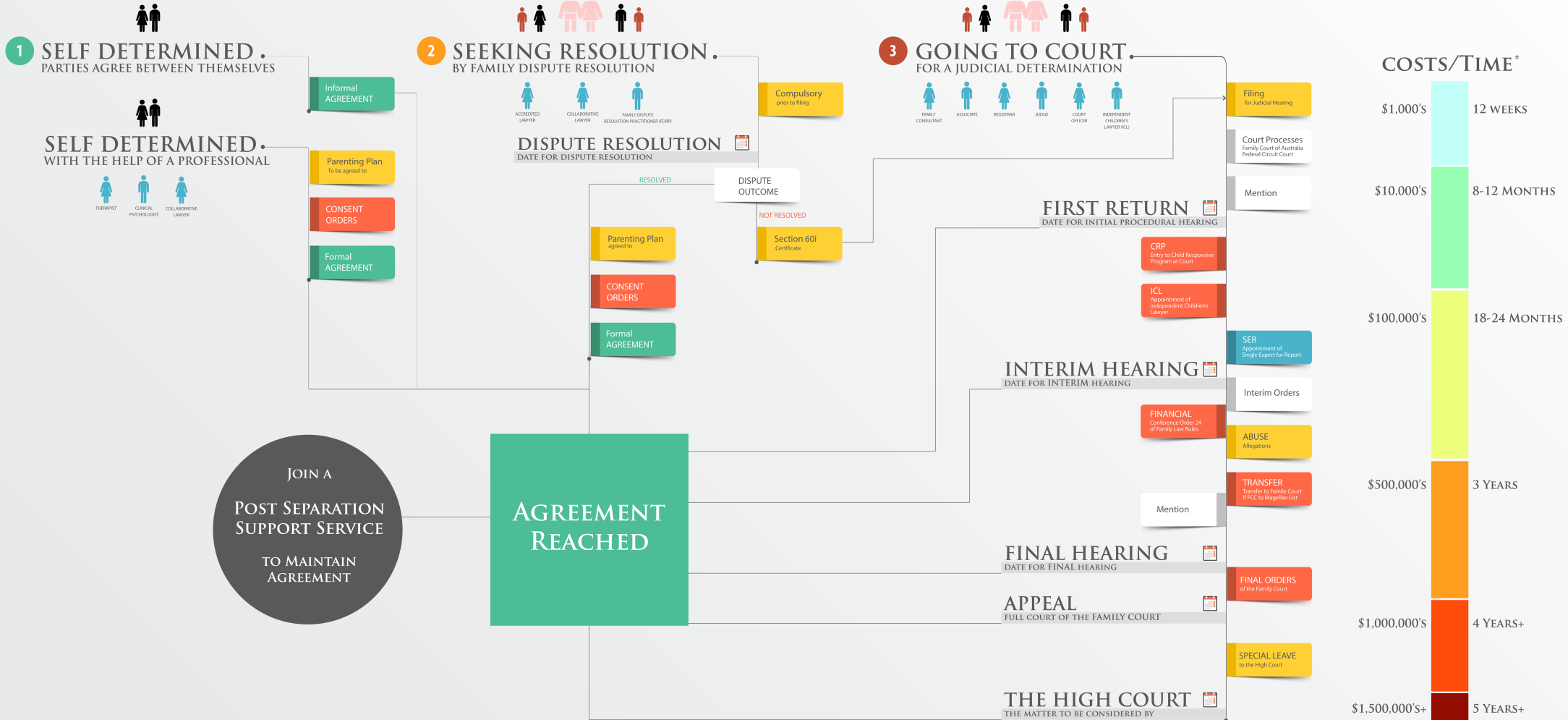
FAMILY LAW IN AUSTRALIA



INFOGRAPHIC: PATHWAYS TO AGREEMENT



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1. FAMILY LAW IN AUSTRALIA

1.1 The Family Law Act

The Family Law Act, 1975 (Cth) (FLA) is federal legislation which came into force in 1976. The Federal Government's power to enact such legislation can be found in the Australian Constitution.


The FLA covers all states and territories except Western Australia, which has its own Act in this area being the *The Family Court Act 1997 (WA)*.

Family law disputes dealing with post separation circumstances (both property division and arrangements for children) are seen as being in the category of private law; they are disputes between two (or more) individuals or corporate entities with recourse to the court if agreement is unable to be reached.

The courts that primarily deal with family law matters in Australia are:

- The Family Court of Australia (longer and more complex cases)
- The Federal Circuit Court of Australia (where the majority of family law cases are dealt with)
- The Western Australian Family Court (cases in WA)

These courts, and the many people who work within the court system, deal with disputes that relate to property settlement/division, parenting matters, spousal maintenance, child support and a range of other ancillary relief such as injunctions.



The focus of this work is on parenting orders: how and why they are made, compliance with court orders and the need for enforcement of those orders if necessary.

Other common disputes that arise after separation include disagreements about schooling, religious upbringing, extra-curricular and sporting activities, vaccination, travel and relocation.


The majority of separating parents reach an agreement about the arrangements for children such as where children live and who they will see on a regular basis. This is done by discussion and agreement by the parents as to what is best for the children.

It is important as a parent to remember that the FLA covers children until they reach the age of 18 years. The FLA does not stipulate an actual age upon which a child can make their own decisions about where they live or who they see on a regular basis. The court does recognise and take into account the views and wishes of young people who possess a level of understanding and maturity and are able to make their own decisions (usually in consultation with their parents) as to their living arrangements.

There is a legislative framework supported by extensive research that supports the idea that children benefit from and should maintain a relationship with their parents, subject to this being safe and in the children's best interests.

Assistance in working out post separation arrangements is often provided by attendance of the parents (and sometimes the children) upon counselling and mediation services. The work here is primarily focusing the parents on arrangements that are best for the children.

Ultimately though, when parents cannot agree, the court system is in place to assist families. A judicial officer will hear evidence and make a determination based on that evidence as to what



is best for the children. This final stage in the court process is undertaken in very few matters filed with the court. It is a testament to parents, court personnel, counselling and mediation service providers and solicitors who assist parents that the vast majority of matters are settled before this final stage in proceedings.

At state and territory government level there is jurisdiction for the government to intervene in family life. This category of law is known as public law, but is more commonly termed ‘welfare law’. All states and territories have enacted legislation for the removal and protection of children by the state in certain circumstances. In NSW this legislation is The Children and Young Persons (Care and Protection) Act, 1998 (NSW).

In addition, the Family Law Rules 2004 (Cth) apply to proceedings in the Family Court of Australia. The purpose of the Family Law Rules is to “ensure that each case is resolved in a just and timely manner at a cost to the parties and the court that is reasonable in the circumstances of the case”.

The Federal Circuit Court Rules 2001 (Cth) apply to proceedings in the Federal Circuit Court of Australia. The object of the Federal Circuit Court Rules is to “assist the just, efficient and economical resolution of proceedings”.

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References

FAMILY LAW ACT

http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/

FAMILY COURT RULES

THE FAMILY COURT OF AUSTRALIA

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home>

THE FEDERAL CIRCUIT COURT OF AUSTRALIA

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/home>

FEDERAL CIRCUIT COURT RULES

WESTERN AUSTRALIA FAMILY LAW ACT

http://www.austlii.edu.au/au/legis/wa/consol_act/fca1997153/

THE WESTERN AUSTRALIAN FAMILY COURT

<http://www.familycourt.wa.gov.au>

THE CHILDREN AND YOUNG PERSONS (CARE & PROTECTION) ACT 1998 (NSW)

http://www.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/

2. IN RELATION TO PARENTING MATTERS

2.1 Relevant Law

When focusing on what arrangements should be put in place for your children it is important to remember that their best interests are your main consideration.

The relevant sections of the Family Law Act related to the best interests of the children principles are:

- Section 60CA: provides that the child's best interests are of paramount consideration in making a parenting order.
- Section 60CC(2) describes how a court determines what is in a child's best interests as the primary considerations namely the need to protect the child from physical or psychological harm and the right for children to know and be cared for by both their parents.
- Section 60CC(3) describes how a court determines what is in a child's best interests giving additional considerations, such as the views of the child, attitude of the parents towards each other and any violence orders relevant to the family members appropriate weight.

Parental responsibility is a term you are likely to hear in your time within the family law system.

- Section 61B describes the meaning of parental responsibility in relation to a child.

You and your ex partner (provided you are both the children's legal parents) retain responsibility for making decisions about your children; where they go to school, their religious

upbringing, important and serious medical decisions. Only by agreement or court order does this change.

You may hear about Equal Shared Parental Responsibility (ESPR) on a regular basis when doing research about family law or in talking to a solicitor about your matter. Flowing on from the roles, duties and responsibilities each of you has as a parent to your children, the Family Law Act states that there is a presumption that parents will equally share this responsibility post separation.

It is the intention and objective of The Family Law Act that where it is safe and in the best interests of the children to do so, parents should continue to consult and discuss issues that affect their children. This presumption can be rebutted in circumstances where it is not appropriate for ESPR to apply, most notably in circumstances where violence or mental health are factors in your family dynamic.

The law is very clear; you are both to continue to make these important decisions as the parents of the children, regardless of whether you live together or apart.

References

FAMILY LAW ACT 1975 – SECT 60CA

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s60ca.html

FAMILY LAW ACT 1975 – SECT 60CC (1) and (2)

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s60cc.html

3. SELF DETERMINED

3.1 Parties agree between themselves

An informal arrangement can be reached when both parents can discuss, decide and agree on matters that need to be sorted in relation to their children. It is when both adults agree to something, type it up and email to each other (or write it and put it up on both fridges). You let the children know and you go about your lives. No need to see a solicitor. No need to see a counselor. As long as both parents are cooperating and the children are not adversely affected by any changes to their lives and routines, this is a good situation for your family to be in.

You may access some support and assistance from a Family Relationship Centre (FRC). These are government-funded centers (www.familyrelationships.gov.au) providing a variety of information and services to separating families. Your local FRC can arrange counselling referrals and mediation, and if agreement is reached can help you with preparation of an agreement or a parenting plan.

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4. SELF DETERMINED WITH PROFESSIONAL

4.1 With the help of a professional

Sitting down with the assistance of an independent, impartial and trained professional to work out your differences can assist and be beneficial to you and your children.

Again, it is important to remember the emotional and economic cost of litigation. There are many job titles that describe professionals in this area of work:

- Alternate dispute resolution (ADR) / ADR practitioner
- Family dispute resolution (FDR) / FDR practitioner
- Mediation / Mediator
- Counseling / Counselor
- Family Therapy / Clinical Psychologist / Psychologist/ Therapist
- Conciliation/ Conciliator

Regardless of the name, sitting and talking can help, provided you feel safe and are not intimidated. Some forms of mediation (like those offered by legal aid commissions) are lawyer assisted, meaning you have your lawyer present with you who can assist in negotiations and ensure that any agreement is child focused and legally binding.

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4.2 Parenting Plan

A parenting plan is a written, dated and signed agreement between you and your former partner dealing with a range of post separation issues for your children. Although not registered with the court, the plan is seen as the intention of the parents to follow a certain pattern for the care of their children.

- You can also use a parenting plan in circumstances where you have current court orders about parenting that no longer reflect the arrangements for your children.
- This might occur when you have parenting orders in place from when the children were young, but as they have grown older the time they spend with each parent has altered.
- A parenting plan can be the agreement you and your former partner reach about how those old orders are to be revised to reflect current parenting arrangements.
- If you choose to cover child support in your parenting plan you should provide a copy to the Child Support Agency (CSA).

The obligation of parents to financially support their children continues post separation. For most families this will commence with one parent calling the Child Support Agency (CSA) to request a child support assessment issue. The assessment is a calculation of the payment by one parent to the other for the financial support of the children.

The formula used to calculate the assessment is based on various matters, including the income of both parents and the amount of time the children are in each household.

Departure from the child support assessment can occur in specific circumstances. If you are not happy with the information in the assessment as you believe incorrect or not up to date

information has been used, you should either contact the CSA or speak to your solicitor to discuss your options.

CS is a complex area of law within the family law jurisdiction, and obtaining legal advice about reviews, departure applications and court action in relation to CS is recommended.

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4.3 Consent Orders

Orders are made to let you and your former partner know what parenting arrangements will be in place for your children moving into the future.

Orders can be made by consent of the parents, or by a judicial officer after a hearing.

If an agreement can be reached by consent of both the parents, then this can be made into a binding parenting and/or financial or property arrangement by filing proposed Consent Orders in the Family Court of Australia.

A binding consent order can only be changed by arrangement between the parties or otherwise only by application to the court.

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4.4 Who can apply for a parenting order?

Over the last 30 years Australian families have evolved from the standard ‘nuclear’ family of a mother, father and children. Families come in all shapes and sizes, and children are being cared for, and are forming attachments and relationships of importance, with people who are not their biological parents. It is important to note that the terms “family” and “parent” are not defined in the FLA, The courts have held that:

The term 'family' has a flexible and wide meaning. It is not one fixed in time and is not a term of art. It necessarily and broadly encompasses a description of a unit which has 'familial characteristics'. - Guest J in Re Patrick (2002).

Parenthood is not an overriding factor in determining parenting cases, and there is no presumption in favour of a biological parent over a non parent. In determining where a child should live and who they should see on a regular basis, the court must have regard to what is in the child's best interests.

Being a parent is a factor, but not an overriding factor, in this analysis.

- Section 65C: describes who can apply for a parenting order in relation to a child. That is, who has standing to apply to the court seeking to have a parenting order made.

The law does not list the groups of people who will automatically have an order made in their favour. This is a determination made by the court as to what is best for each child or sibling group.

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5. BEING SELF-REPRESENTED

5.1 No Lawyer

You are entitled to represent yourself in your family law matter, including responding to letters from the other parent or their solicitor, preparing your court documents or appearing in court. For many people the inability to qualify for legal aid or pay for their own representation means there are few alternatives.

It is important to remember the avenues open to you in relation to obtaining free advice. Legal aid bodies in each state provide free legal advice clinics in most city and metropolitan areas, as well as regular advice clinics in remote, regional and rural areas.

In NSW, Law Access provides telephone assistance in family law matters. This is not always advice, but could be in the form of a referral to get the assistance you require. For other states and territories you should check your state government websites for access to free legal advice in your area.

Guidance from a solicitor in the court you are attending (called a duty solicitor) can be obtained, but you need to check as to the level of assistance (advice, appearing in court, preparing court documents) because this can vary from court to court and from state to state. Do not assume someone will be at court on that day to appear and talk on your behalf. You must be prepared to have relevant documents filed and be able to speak to the law and the facts of your case if called on by the judicial officer to do so.

The Commonwealth Portal (the portal) at www.comcourts.gov.au is a federal government initiative designed to make access to the federal courts system easier for all. If you have a

matter in the family law courts you can access the portal and be informed about court events and documents filed.

You can also file certain documents yourself using the portal if you are self represented. The first step once your court proceedings have commenced is to register for access to the portal. You can also set up an email alert to let you know when court dates have been allocated or if anyone else has filed a document in your matter.

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When to get family law advice

You should obtain family law legal advice if you are:

- considering separation;
- are in the process of separating; or
- have separated.

This advice can be about parenting matters, property separation, child support and a range of other issues relevant to your circumstances. You may need to seek advice about a combination of issues, such as when you are a non salary earning parent who may need to know about the post separation living arrangements and financial support you can obtain for yourself and for the children.

There is no right or wrong time to obtain legal advice, but in general terms the sooner you obtain advice the better. This is especially true when you have been served with court documents from your former partner or a solicitor. As much as this is an overwhelming time for most people, getting advice and legal assistance as early as possible provides you with time to think, reflect and act upon that advice.

Choosing your legal advisor is an important consideration. The person you choose to do legal work for you is a person you need to have confidence in. You will be talking to this person about some deeply personal and, in some instances, confronting information, and a relationship of trust needs to be established. It may assist if you meet with a range of solicitors so that you can get a feel for the person you are likely to get along with, have confidence in and who will look out for your interests in the most cost effective way.

The Law Society of NSW provides a list of specialist solicitors in family law. An accredited specialist has a level of independently verified, demonstrated expertise in the practice of family law. A specialist must also maintain and attend additional annual training in the area of family law. Again, your financial position will dictate whether or not you can afford a solicitor to act on your behalf.

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5.3 Family dispute resolution/mediation

Engaging a third party professional who specialises in matters involving separating parents can be very useful. Family Dispute Resolution is a process that encourages separated parents to meet together to discuss and make decisions regarding parenting and living arrangements for their children. The family law system encourages parents to try and agree on arrangements for their children without having to go to court. Family dispute resolution is a practical, less stressful and inexpensive way for separated families to sort out these arrangements and create a written parenting agreement/plan as requested. Agreements made during Family Dispute

Resolutions are not legally binding but can be made into a Parenting Plan, as proposed Consent Orders, with legal advice.

A Family Dispute Resolution Practitioner plays a neutral role and does not take the side of either participant, regardless of whichever parent started the process. The role of the Family Dispute Resolution Practitioner is to help separated parents (and other parties) discuss issues, look at options and work out how best to reach agreement. Further to this the Practitioner will encourage parents to think about the needs of their child/children and to make decisions together that are developmentally appropriate and in the best interests of their child/children.

Compromise will be required, but as adults it is expected that you and your former partner will work out a routine that is good for your children and that the two of you can live with.

Family Dispute Resolution is a confidential process, with all participants requested to keep all matters raised during the process strictly between themselves.

The Family Dispute Resolution Practitioner cannot disclose what is said or done by any of the parents without their consent. The exceptions to this confidentiality are when the Practitioner is mandated (by law) to disclose information that has been provided that indicates there is a serious risk of harm to a child or another adult.

There may be times where, as part of the Family Dispute Resolution process, it may be helpful for the Practitioner to liaise with other people or agencies that are relevant and involved in the case.

Under Section 10J of the Family Law Act, communications made in Family Dispute Resolution are not admissible in any court or proceedings, in any jurisdiction, unless one of the exemptions apply.

REFERENCE

FAMILY LAW ACT – SECT 10J

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s10j.html

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5.4 Outcomes of a family dispute resolution

In many instances, the process of Family Dispute Resolution leads to an agreement which can be provided to the Court and, once approved by the court, becomes a Consent Order.

Sometimes the process fails to reach an agreed outcome and the dispute or issues under discussion are not resolved.

The Family Law Act 1975 requires parents to obtain a certificate from a registered Family Dispute Resolution Practitioner before filing an application for a parenting order in court, unless one of the exemptions apply.

To obtain the required certificate, issued under Section 60I of The Family Law Act, you must attend Family Dispute Resolution / Mediation and try and attempt to resolve any problems that you have in relation to your child/children.

If the participants cannot agree in Family Dispute Resolution the Practitioner will, on request, issue you with a 60I certificate.

This Certificate is needed in order to commence court proceedings. Other circumstances where you can receive a certificate are;

- The Practitioner did not consider it appropriate for family dispute resolution.

- One of the participants did not make a genuine effort to resolve the issues in dispute.

- The participants began dispute resolution but part way through the practitioner decided that it was not appropriate to continue.

- One of the participants did not attend family dispute resolution.

You should be aware that if Family Dispute Resolution is required and you do not attend, or make a genuine effort to resolve the dispute, should the other party choose to take the matter to Court, then the consequences maybe that;

- The hearing of your case may be delayed,

- The Court may order you and the other party to attend Family Dispute Resolution, and/or

- the court may take this into account in deciding costs (you could be ordered to pay some or all of the other party's legal costs).

FAMILY LAW ACT – SECT 60I

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s60i.html

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6. GOING TO COURT

6.1 Going to court for a Judicial Determination

If you go to court, there are various people whose roles in the court process you need to be aware of. People involved include:

- The judicial officer (judge) who will make decisions about how your matter proceeds, any short term or interim arrangements for the children and what evidence you will be required to file. If you are one of the very small percentage of families that requires a final hearing then the judge will read and listen to the evidence and make a determination about your children's future.
- A registrar is a court employed officer who is responsible for ensuring matters are prepared in accordance with the rules of the court and the directions made by them or the judge are complied with. Some registrars also conduct interim hearings.
- The family consultant is a court employed social worker or psychologist who has training and expertise in dealing with families and children. You are likely to meet with a family consultant on several occasions during the court process. The family consultant will meet with you and your former partner when asked by the court to do so, and they may also meet with your children. The family consultant prepares memoranda and reports for the court to assist in the determination of what is in the children's best interests.

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- The associate is the person working with the judge or the registrar in maintaining proper court procedures. This is an important administrative assistant role. Some judges also have legal associates who assist in relation to research.
- Another court employee who your solicitor (or you, if you are representing yourself) needs to talk to and let them know you are at court is the court officer. They assist the judicial officer in the smooth operation of a court list or the hearing of a matter.

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6.2 Costs/Time/Control

These variables can be taken out of your control when you enter an adversarial pathway and require a judicial determination to reach an outcome. There are considerations of cost and time which increase as you litigate for longer. Opportunities to settle the parenting arrangements will arise along the litigation pathway, these should be considered carefully to avoid increasing costs and time in court.

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6.3 Filing an application and court processes

Filing is a procedure where documents are lodged at a family law registry for placing on a court file. How your matter will progress in the court and how many court events you will need to attend will depend on many variables, including which court your matter is in, the resources of that court, any delay in your matter being heard and evidence that needs to be prepared and presented at an interim or final hearing.

Below are links to the Family Court and Federal Circuit Court to give you an idea of how matters progress through each court.

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6.4 Independent Children's Lawyer - ICL

A court can make an order for the representation of children in circumstances where 'it appears to the court that the child's interest in the proceedings ought to be independently represented by a lawyer'.

This legal representative is called the independent children's lawyer (ICL). An ICL is not appointed for children in every parenting case.

There are many live with and spend time with disputes involving competent, caring, responsible parents who simply cannot agree on arrangements for their children. An ICL is unlikely to be appointed in such cases.

Appointment of an ICL is not automatic. The court will determine if your matter is one in which the interests of the children need to be separately represented. You or your partner can make an application for the appointment of an ICL, or the court can make that order without you or your partner asking.

Once an order is made for the appointment of an ICL you or your solicitor will be notified who that person is. The ICL will need to be provided with a copy of all documents filed on your behalf, so getting copies ready to be forwarded would be a good first step.

You will also be asked to fill in a questionnaire and make an initial contribution towards the cost of the ICL. If you are not in a position to meet this payment then complete the financial form provided so a waiver of this contribution can be determined. If you are in receipt of a current legal aid grant for your own solicitor then you do not need to make this contribution.

The law governing the appointment and role of the ICL is contained in Part VII, Div 10 of the FLA (Sec 68L and 68LA) and Rule 8 of the Family Law Rules 2004 (the Rules).

The role and duties of the ICL are found in Section 68LA and involve the ICL:

- Forming an independent view of what is in the child's best interests based on the evidence available.
- Acting in the court proceedings in what the ICL believes is in the best interests of the child.
- Acting impartially in dealing with the parties.
- Ensuring that the child's views are fully put before the court.
- Analysing and identifying the contents of any reports as they relate to the child's best interests, and bringing those relevant issues to the court's attention.
- Endeavouring to minimise trauma to the child.
- Facilitating agreed resolutions that are in the child's best interest.

As to the views and/or disclosures of a child, the ICL cannot be compelled and is under no obligation to disclose to the court any information given to the ICL by a child. This is governed by section 68LA(6) of the Family Law Act 1975. However, section 68LA(7) of the *Family Law Act 1975* states that the ICL may disclose information from the child to the court if the ICL

considers the disclosure to be in the child's best interests, and this section applies even if the disclosure is against the wishes of the child (section 68LA(8)).

The appointment of an ICL usually ceases once the court case comes to an end, which usually happens upon the making of final orders.

In some matters the term of the appointment of an ICL is extended, and this may occur for various reasons including the monitoring by the ICL of changed living conditions, ongoing supervision or the requirement for the ICL to assist with counselling or family therapy referrals.

The role of the ICL is an active, not a passive one. The role goes beyond assisting the court in determining the substantive issues in the case, such as with whom a child should live or spend time. An ICL will take a proactive role in the procedural management of the case once appointed. For example, it is common for ICLs to apply to the court for expedition or for the appointment of an expert. The ICL will also play a crucial role in interim proceedings. The ICL tells the children they represent about the role, including what the ICL does for them and how the court process works so as to help them understand what will happen while their parents go through the court process.


A couple of important points here:-

- The meeting is not a process of interrogation about the parent or person with whom the child wants to live. The ICL gives each child interviewed an opportunity to express a view about their living arrangements. Some children have a view and others do not. Many children express an opinion about their living arrangements, but ask their lawyer not to tell their parents. Some children elect not to discuss their family situation at all.
- An ICL does not conduct disclosure interviews or try to determine the truth of matters in issue in the proceedings. Although an ICL will not specifically try and discuss any allegations of, or

concerns about, abuse with a child, on rare occasions, children do disclose abuse to their legal representative.

- An important aspect of the first meeting is to tell the children how they may contact their legal representative in future. A business card is given to each child. Some children make frequent contact with their ICL and some do not.
- The ICL should maintain contact with the children throughout the case. Given delays in the court process, the ICL must keep in touch with the children before major court events such as interim and final hearings. For example, a meeting before a final hearing to discuss possible outcomes is very important.
- An ICL is not a social scientist. An ICL does not interpret expressed children's views and the weight to be attached to them. This is the role of the Family Consultant or the expert appointed to prepare a report. It is quite proper for the ICL to form a view as to the weight to be attached to expressed views having regard to the expert and other evidence.
- The ICL does not act on instructions. It is open to the ICL to make recommendations which are contrary to the expressed wishes of a child, as the obligation is to promote an outcome which accords with the best interests of each child represented.
- There is a positive obligation on an ICL to ensure each child's views (assuming they want to express their views – and often they do not) are placed before the Court in admissible form. However, there is also a positive obligation on an ICL to place material relevant to the children's best interest before the Court, even if that conflicts with the views expressed by the child.
- An ICL makes enquiries regarding the welfare of the children and ensures all relevant evidence is before the Court. Speaking to school teachers, welfare workers, police officers,





adjusting to a change in their household and their routine, or financial or other issues are still not clearly arranged.

It may also be that you and your partner, or the court, decide that the children require an interim or temporary parenting arrangement until such time as longer term or final arrangements can be put in place.

If you and your partner are able to reach an agreement about all future care arrangements for the children, then a final order can be made. This can be done by a consent order. A final order is also the usual type of order that a judge makes at the end of a final hearing.

Parenting orders can take many varied forms. A 'live with' order is an order or decision made which confirms who your children will live with primarily. A 'spend time with' order is an order or decision made which confirm who your children will see on a regular basis.

Do not forget that a third party (like a grandparent or uncle) who has been a significant figure in your children's lives can have a parenting orders made in their favour.

There are no set time patterns that are best for your children. You, as their parent, are aware of routines, school events, sporting and extra curricular activities, friendship groups, hobbies and the important events in your children's live.

The ICL should explain any orders (interim or final) made to the children. This may not always necessitate a further meeting, and may be done by telephone or letter. If the outcome does not align with the children's expectations, it is best to discuss this outcome face to face.

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6.7 Abuse allegations

If an ICL is appointed in a matter, you can assume that there is some aspect of the case which is complex or unusual. Matters such as sexual abuse allegations or questions around a parent's mental health status are usual reasons for the appointment of an ICL.

Upon appointment an ICL will usually meet with the children they represent, except in exceptional circumstances. Exceptional circumstances would include a child of a very young age or where other circumstances (such as an ongoing Joint Investigative Response Team (JIRT) investigation) will make meeting with the child inappropriate.

Family violence is defined in the FLA as violent, threatening or other behaviour by one person that coerces or controls a member of the person's family or causes that family member to be fearful. Abuse of a child is also defined in the FLA as meaning, among other things, an assault on the child.

Examples of behaviour that are considered to be family violence include assault, stalking, denying a family member financial autonomy and preventing the family member from maintaining contact and a relationship with extended members of their own family.

Research is very clear as to both the physical and psychological effects that violence within a household has on members living there.

The physical impact caused by violence can be hospitalisation, inability to work and attend school and detrimental long term health outcomes for those exposed to violence. Exposure to violent behaviour also provides a clear example of poor role modelling and may also lead to violence being perpetuated across generations of a family.

If you or your family are subject to violence or abuse you should access help. Protection orders can be obtained from your state Police service. Orders for the protection of you or your children



References

FAMILY COURT PROCESSES

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/about-going-to-court-and-court-processes/if-your-case-is-in-the-family-court-of-australia/if-your-case-is-in-the-family-court>

FEDERAL CIRCUIT COURT PROCESSES

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/family-law-matters/about-going-to-court-and-court-procedures/if-your-case-is-in-the-federal-circuit-court-of-australia/if-your-case-is-in-the-fcc>

REFERENCES FOR ICL

FAMILY LAW ACT SECT 68L

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s68l.html

FAMILY LAW ACT SECT 68LA

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s68la.html

FAMILY VIOLENCE BEST PRACTICE PRINCIPLES – FAMILY COURT

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/family-violence-best-practice-principles/>

FAMILY LAW ACT – SECT 4AB – definition of family violence

http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s4ab.html

7. REACHING AN AGREEMENT

7.1 Reaching an Agreement

The determining factor for working out post separation parenting arrangements is to determine what arrangements are in the best interest of your children.

This principle guides all decision-making and is fundamental to the exercise of a 'child focused' approach to parenting matters.

Where your children lives and who they see on a regular basis are decisions you and your former partner are encouraged to make together, but if you cannot agree then the court will make a decision.

In doing so, the court has the guidance of section 60CC to determine what is in a child's best interests. In particular, you should look at some of the factors in section 60CC(3) that a court has to consider when determining what is best for children and young people.

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7.2 Joining a post separation support service to maintain the agreement

It is important as a parent to remember that the FLA covers children until they reach the age of 18 years. This can often mean that separated parents have to continue to adapt and be flexible in respect of their shared parenting arrangements, sometimes for many years.

The FLA does not stipulate an actual age upon which a child can make their own decisions about where they live or who they see on a regular basis. The court does recognise and take into account the views and wishes of young people who possess a level of understanding and

maturity and are able to make their own decisions (usually in consultation with their parents) as to their living arrangements.

If you have younger children and you have interim or final orders from the court, seeking assistance from a professional service to assist you manage those orders is important.

Being engaged with a family therapist who understands the nuanced area of family law and separated family dynamics can help you and your ex partner stay positively focused on the children – and comply with the orders.

Keeping on top of arrangements and noticing when things are starting to change or become more difficult to manage is the time to re-engage with an experienced post separation support service professional.

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7.3 When things go wrong

If there is a situation after Interim or Final Orders have been settled such as when one parent refuses to return the child/ren or does not follow the orders, it's important to stay calm.

If you have a court order that says that the children live with you then you need to commence proceedings so the court can make a recovery order.

A recovery order says your former partner must return the children to your care. In some matters this type of order can also enable the Police to assist in the return of the children to your care.

If this has occurred it is likely that your former partner has also breached the current parenting order, which can result in contravention proceedings being commenced. You should seek legal advice in relation to this issue.

If you do not have a court order dealing with parenting arrangements, the Police and the family law courts are not in a position to assist until such time as you obtain a parenting order. That is not to say that you should not inform the Police, especially in circumstances where you have some fear or apprehension about the safety of your children. To apply for an urgent interim parenting order that includes the return of the children to your care see a solicitor or contact a family law court registry to see which registry closest to you has a duty or early intervention solicitor who can assist you in the preparation and filing of the relevant court documents.

If you are required to do this yourself then you must make an application for a parenting order and seek a recovery order at the same time. What you are saying to the court is that the children were either living with you or where seeing you on a regular basis, and the other parent has taken actions to remove the children from your care or from seeing you regularly.

If you live in a remote, rural or regional area the family law courts have a hotline you can call to find out where your closest court is or when court circuits to your area are scheduled to occur. Legal aid organisations in your state can also be contacted as they organise outreach to rural and remote areas of Australia to provide family law advice.

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