



Before you file:

Pre-action Procedure for Parenting Cases
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

This brochure contains information about what you will need to do before you make an application to the Family Court of Western Australia for a parenting order.

Different procedures apply to cases dealing with financial matters. For more information, see the brochure “Before you File - Pre-action Procedure for Financial Cases”.

If you need more information about what you need to do before you can apply to the Family Court of WA contact the Family Relationship Advice Line on 1800 050 321.

What is required?

Anyone seeking a parenting order from the Family Court of WA must attempt to negotiate a settlement before the Court will accept their application.

This process is called ‘Compulsory Family Dispute Resolution’.

In order to make an application for a parenting order with the Family Court of WA you will need to present one of the following documents when you come to file your application:

- 1) A certificate from a Family Dispute Resolution Practitioner.

OR

- 2) An exemption form.

To see if you qualify for an exemption, refer to the ‘Claiming an Exemption’ section on page two of this brochure.

You will not be able to file an application for a parenting order unless you can show a certificate from a Family Dispute Resolution Practitioner OR your Exemption Form is approved by the Court

What is Compulsory Family Dispute Resolution?

Compulsory Family Dispute Resolution is a process separating families must undergo before they can make an application to the Court. It gives you an opportunity to resolve your dispute without having to pay for an expensive trial.

Dispute resolution services come in many forms, including services like:

- family counselling;
- negotiation; or
- conciliation.

You can choose the type of dispute resolution that best suits your situation.

Remember to make sure that your dispute resolution provider is a **registered** Family Dispute Resolution Practitioner. If you participate in dispute resolution with a practitioner who is not registered, you will not get a certificate and may not be able to apply to the Court without more dispute resolution.

- You can obtain more information, and get help arranging your dispute resolution, from the Family Relationship Advice Line on 1800 050 321.
- If you fail to reach an agreement at your dispute resolution session, or the other party fails to attend, you will be issued with a certificate which will allow you to commence an application for a parenting order in the Family Court of WA.

What happens after Family Dispute Resolution?

What happens after dispute resolution depends on whether you have managed to come to an agreement with the other party.

If an agreement is reached

If an agreement is reached during dispute resolution, you and other party may enter into a Parenting Plan or apply to the Court for a Consent Order.

Parenting plans

Are written agreements between the parties setting out parenting arrangements for children:

- They do not need to be approved by the Court.
- They are not legally binding.
- They can be changed by agreeing to a new Parenting Plan.

For more information on Parenting Plans:

- go to www.familyrelationships.gov.au

Consent order

Is a written agreement between the parties that is approved by the Court and has the same effect as a Court Order:

- They need to be submitted to the Court for approval.
- They are legally binding.
- In most cases they cannot be changed without making an application to the Court.

To get a Consent Order Kit:

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

If no agreement is reached

If no agreement is reached, then either party may make an application to the Court for a parenting order.

For more information on lodging an application for a parenting order or to get a “Parenting Orders Kit” call 08 9224 8222, or visit the Family Court of WA registry or website www.familycourt.wa.gov.au.

Claiming an exemption

In certain circumstances the Court will not require you to undergo Compulsory Family Dispute Resolution.

If you want to claim an exemption, you will need to show that your case falls into one of the following categories.

- You are applying for consent orders. (See the Consent Orders Kit).
- You are responding to an application.
- Where the matter is very urgent.
- Where you are unable to participate effectively in Dispute Resolution.
- There has been child abuse or family violence.
- There is the risk of child abuse or family violence
- Your application concerns contravention of a parenting order that was made less than 12 months ago and alleges behaviour that shows a serious disregard of obligations under that order.

A Registrar will consider your claim and decide whether or not you fall into one of the categories.

If you are successful you will be allowed to lodge your application to have your matter heard by the Court.

- To claim the exemption you will need to fill out an exemption form, available from the registry of the Family Court of WA.
- If you are trying to claim an exemption because of child abuse or family violence issues, you will need to provide additional information.
- You should read the “Exemption Form Kit” available from the registry of the Family Court of WA or the website www.familycourt.wa.gov.au.

Compliance

If a case goes to Court the Court will look at whether the pre-action requirements have been met, and if not, what should be the consequences (if any) of either party failing to comply.

The Court may, where one party has been unreasonable and failed to follow the pre-action procedures:

- order that the party who has failed to comply pay all or part of the other party's costs; or
- change the way your case progresses through the Court.

The Court may also ensure that the complying party is in no worse a position than he or she would have been if the other party had followed the pre-action procedures.

What happens next?

Once your application is filed the Court will give you a date for your first court appearance

Before your first Court date:

- you should attend an information session; and
- you will need to make sure that you have exchanged important documents with the other party.

The “Parenting Orders Kit” and brochure 3 “Case Assessment Conference” can tell you more about what you will need to do before your Case Assessment Conference

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to Court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

Court staff can help you with questions about Court forms and the Court process, but cannot give you legal advice

Personal safety

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

Need more information?

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

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

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

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

Who else can help?

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

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice. The Family Court of WA respects your right to privacy and the security of your information.
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