

THE FAMILY COURT OF AUSTRALIA

The Family Court of Australia, through its specialist judges and staff, assists Australians to resolve their most complex legal family disputes.

The Family Court of Australia is a superior court of record established by Parliament in 1975 under Chapter 3 of the Constitution. It commenced operations on 5 January 1976 and consists of a Chief Justice, Deputy Chief Justice and other judges. The Court maintains registries in all Australian states and territories except Western Australia.

Our goal

The Court's goal is to deliver excellence in service for children, families and parties through effective judicial and non-judicial processes and high quality and timely judgments while respecting the needs of separating families.

Our purpose

The purpose of the Court, as Australia's superior court in family law, is to:

- determine cases with the most complex law, facts and multiple parties
- cover specialised areas in family law, and
- provide national coverage as the appellate court in family law matters.

Our vision

The Court's vision provides for:

- putting children and families first in the design and delivery of services
- furthering functional family relationships after separation
- independence and impartiality in the judicial process
- having staff who are valued for providing quality service for families
- providing quality child dispute services for families, and
- being at the forefront of the development of services.

Jurisdiction

The Family Court of Australia is a superior court of record and deals with the most complex family law matters. These include:

- Parenting cases that may involve multiple parties, including those that involve a child welfare agency and/or allegations of sexual abuse or serious physical abuse of a child (Magellan cases), family violence and/or mental health issues.
- Parenting cases where orders sought have the effect of preventing a parent from communicating with or spending time with a child, multiple expert witnesses, complex questions of law and/or special jurisdictional issues, international child abduction under the Hague Convention, special medical procedures and international relocation
- Financial cases that involve multiple parties, valuation of complex interests in trusts or corporate structures, including minority interests, multiple expert witnesses, complex questions of law and/or jurisdictional issues (including accrued jurisdiction) and complex issues concerning superannuation (such as complex valuations of defined benefit superannuation schemes).

The Family Court of Australia also has original jurisdiction under other Commonwealth Acts including:

- Marriage Act 1961 (Cth)
- Child Support (Registration and Collection) Act 1988 (Cth)
- Child Support (Assessment) Act 1989
- Bankruptcy Act 1966

Programs of work

The Court has designed four programs of work to ensure that it fulfils its stated purpose:

- maintaining an environment that enables judges to make determinations
- provision of effective and efficient client services
- corporate management of resources, and
- effective information and communication technologies.

Our outputs

The Family Court is funded to provide two outputs:

- resolution (measured by mediated agreements and consent orders), and
- determination (measured by interim orders, final orders, appeals and divorces).

The resolution output continues to reflect the fact that, to date, the Court has invested significantly in resolving disputes through the work of its family consultants and registrars. However, the function of the Court has changed as a result of legislative reforms to the family law system over the past several years.

The establishment of Family Relationship Centres and the continued work of the Federal Magistrates Court should ensure that the Court can increasingly focus on the determination of the most complex family law disputes and reduce the emphasis on the provision of dispute resolution (mediation) services.

The Family Court of Australia

The Family Court of Australia can determine all matters dealing with family law. This includes:

- nullity or validity of marriage;
- children;
- property;
- maintenance;
- child support; and
- appeals from decisions of the other courts including by a federal magistrate dealing with family matters, and of decisions made in the Family Court itself.

In child support matters, the parties must first satisfy all requirements of the Child Support Agency. The procedures of the Family Court are set out in the Family Law Rules 2004. The Court aims to help families resolve their disputes without the need of going to a trial before a judge. Accordingly, the Court has a case management approach that has three main phases:

Stage 1: Prevention

Stage 2: Resolution

Stage 3: Determination

Court Registries

The Family Court of Australia has 20 registries (offices providing services to the community).

The Family Court of Australia also provides circuits (visiting services) to a wide range of smaller communities, including many more remote indigenous communities.

The Federal Magistrates Court

The Federal Magistrates Court deals with less complex family law matters, its objective being to provide a simple and accessible alternative for the resolution of family law disputes.

The rules and procedures of the Federal Magistrates Court reflect the simpler and less formal case management practices of the court, which aim to reduce the number of times that the parties have to come to court and to hear most cases without excessive delay.

The Federal Magistrates Court can hear divorces, children, property, maintenance and child support cases. It cannot hear:

- nullity or validity of marriage applications; and
- property or maintenance cases in which the property is valued at more than over \$700,000, unless with consent of both parties.

The Federal Magistrates Court encourages the use of primary dispute resolution (counselling, mediation and conciliation). The Court does not assume that every case ends in a contested hearing and where practical, parties are encouraged to resolve their disputes through out of court negotiations.

Parenting Plans

Parenting Plans are traditionally more informal agreements between the parties and may also contain statements about their intentions toward the children and the other partner.

Consent Orders are more formal documents and should be 'phrased' correctly in a way that leaves no possibility of misinterpretation of the orders between the parties. Orders do not contain 'intent' phrases they are formal 'contractual' legally enforceable agreements and are phrased as such. There is NO legal difference between Consent Orders and orders made by a Judge or Federal magistrate.

A Family Relationship Counsellor or Family Dispute Resolution Practitioner must inform parties that:

- If the arrangements are "*reasonably practicable*" and in the "*best interests*" of the child then the child spending equal time with each of them may be an option for them to consider.
- If equal time is not appropriate but it is "*reasonably practicable*" and in the "*best interests*" of the child for the child to spend "*substantial and significant time*" with each of them then they should consider that option.
- Parenting issues should focus on the best interests of the child.
- The matters that may be dealt with in a Parenting Plan are set out in **Section 63C (2) Family Law Act**.

Parenting Plans	Consent Orders
Parenting Plans were first introduced to the Family Law Act in 1996, they were later removed but have now been reintroduced with the amendments to the Family Law Act on 1 July 2006.	Consent Orders are registered Court orders.
A Plan provides a way of documenting children's arrangements other than with a Court Order.	Consent Orders also documents the arrangements for the children.
A Parenting Plan is an agreement in writing, that is made, dated and signed by both parents and which deals with arrangements for the children.	Consent Orders are in writing, dated and signed by both parents and witnessed .
Parenting Plans can deal with a variety of matters, such as, who a child lives with or spends time with, whether parental responsibility is shared or allocated, dispute resolution and other aspects of care for the child.	Consent Orders deal with the same issues.

A Parenting Plan can be made at anytime and anywhere. There is no standard form for a Parenting Plan so it is quite easy for a Parenting Plan to be made.	Consent Orders can be made on the same basis. Consent orders are more formal, unambiguous and have a preferred layout.
A Parenting Plan can be made before or after 1 July 2006, it can be made inside or outside of Australia and it can be made with other people as parties to it other than the child's parents (including a grandparent or other relative of the child).	Consent Orders can be made at any time but must be 'lodged and recorded' in a Family Court(s) registry. The most common type is party to party (<i>Father and Mother</i>).
A Parenting Plan can be revisited and updated to reflect the changes which occur from time to time.	Consent Orders can be re lodged at any time to reflect any changes that have or are likely to occur. This can be done by (a) 'superseding all previous orders' or (b) amending previous existing orders ie Order 3A is replaced with x.
Parenting Plans are NOT registered with the Court and are NOT enforceable as Court Orders.	Consent Orders ARE registered with the Court and ARE enforceable as Court Orders.
If a dispute between parents arises after a Parenting Plan has been prepared, the Court is entitled to look at the Parenting Plan as a reflection of the parties intention in guiding the Court as to what Order is appropriate.	If a dispute arises (<i>normally a contravention</i>) after Consent orders have been lodged, the Court 'determines' the issue according to the wording of the orders.
If a Parenting Plan is made after a Court Order has been made then the Parenting Plan overrides the Court Order.	Revised Consent Orders lodged with the Court override any other written agreements unless the Parenting Plan specifies this. <i>Note: Parenting Plans are NOT enforceable.</i>
A Parenting Plan may be varied or revoked by agreement in writing between the parties to the Plan.	Consent Orders may be varied at any time by agreement between the parties and by re-lodging the ' <i>amended</i> ' (revised) orders. The Courts do not charge for Consent Order lodgement.