



# Holistic Law

*“where life and law meet”*

## Initiating Proceedings

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### *Summary of this Guide*

This guide is designed to help self-represented litigants understand how to properly start, respond to, and manage a family law case in the Federal Circuit and Family Court of Australia.

It explains, in practical terms, what steps must usually be taken before going to court, including pre-action procedures, dispute resolution, and genuine efforts to resolve matters. It also outlines when exemptions may apply and the consequences of failing to comply.

The guide walks through:

- how to initiate or respond to proceedings,
- what documents need to be filed and served,
- how court orders should be drafted so they are clear and enforceable,
- how to prepare affidavits correctly, and
- how service of documents works.

It is intended to reduce confusion, avoid common mistakes, and help self-represented parties present their case clearly, respectfully, and in a way the Court can understand.

### ***Pre-Action Procedures***

#### **What you must do before starting a Family Law court case**

Before you file an application in the Federal Circuit and Family Court of Australia, the law usually requires you to take certain steps first. These are called pre-action procedures.

The purpose of pre-action procedures is to:

- give everyone a chance to resolve the dispute without going to court, and
- narrow the issues if court proceedings are unavoidable.

The Court expects parties to make a genuine effort to resolve matters before filing.

#### **1. Do pre-action procedures apply to me?**

Pre-action procedures apply to:

- people thinking about starting a court case
- people responding to a case, and
- lawyers (if involved)

They apply to both financial/property cases and parenting cases, although the requirements are slightly different.

#### **2. What does “genuine effort” mean?**

Making a genuine effort usually includes:

- trying dispute resolution where it is safe to do so
- clearly explaining your position to the other party
- exchanging relevant information and documents
- responding to the other party within reasonable timeframes

Simply “going through the motions” is not enough.

### **3. Pre-action steps for financial and property matters**

<https://www.fcfsa.gov.au/fl/pubs/pre-action-financial>

If your case is about property, money, superannuation, or financial support, you are usually required to do the following.

#### **Step 1: Try to resolve the dispute**

You should:

- consider dispute resolution options such as negotiation, mediation, conciliation, or arbitration
- invite the other party to participate (if it is safe)

#### **Step 2: Exchange information**

You must, as far as practicable provide relevant financial documents and comply with your duty of full and frank disclosure

This obligation applies before court proceedings start.

#### **Step 3: Send a “Notice of Intention”**

If the matter does not resolve, you must write to the other party setting out:

- the issues in dispute
- the orders you would ask the Court to make
- a genuine offer to settle
- a time for response (at least 14 days)

#### **Step 4: Respond to any notice you receive**

If you receive a notice of intention, you must reply in writing:

Accept the offer, or explain why you do not agree and make a genuine counter-offer

#### **Step 5: Only file in Court if resolution fails**

If reasonable efforts do not resolve the matter, you may then file an application.



#### **4. Pre-action steps for parenting matters**

<https://www.fccoa.gov.au/fl/pubs/pre-action-parenting>

Parenting cases have additional requirements.

##### **Step 1: Family Dispute Resolution (FDR)**

Before filing, you must usually attempt Family Dispute Resolution with an accredited practitioner, and obtain a Family Dispute Resolution Certificate

Without a certificate (or a valid exemption), the Court will not accept your application.

##### **Step 2: Record any agreement**

If agreement is reached, you may enter into a parenting plan, or  
apply for consent orders

##### **Step 3: If no agreement is reached**

If FDR does not resolve the matter you must send a written notice of intention (similar to financial cases) and you must allow time for the other party to respond

Only after these steps can court proceedings usually begin.

#### **5. When are you exempt from pre-action procedures?**

You may not need to comply with some or all pre-action steps if:

- the matter is urgent e.g. child recovery
- there is family violence or a risk of family violence
- there is child abuse or a risk of child abuse
- delay would cause serious prejudice – e.g. property or money might be sold, hidden, or transferred before court action.
- a similar application was filed in the last 12 months - You or the other party filed a court application about parenting or property less than 12 months ago, and you are

now applying again about the same children, the same property, or closely related issues.

If you rely on an exemption you must explain it in your affidavit, and you must complete a Genuine Steps Certificate

The Court will review this at your first court date.

### **6. What happens if I don't comply?**

If the Court finds unreasonable non-compliance, it may:

- order you to pay some or all of the other party's legal costs
- delay your case
- make procedural orders that disadvantage you

Examples of non-compliance include:

- not responding to letters
- refusing to provide documents
- ignoring dispute resolution invitations

### ***Orders***

Property orders are court orders that deal with how assets, debts, superannuation, and financial resources are divided after separation.

This can include houses, money in bank accounts, vehicles, businesses, superannuation, loans, and credit cards.

The Court does not automatically divide property 50/50. Instead, it looks at what is fair and equitable in your particular circumstances.

“Fair and equitable” means what is fair in your situation, not necessarily an equal 50/50 split. The Court looks at what each person contributed to the relationship and what each person needs now and in the future, and then decides on a division that is reasonable overall.

Good court orders should:

- be clear and easy to understand
- be specific, not vague or open to interpretation
- clearly state who must do something
- clearly state what must be done
- clearly state when it must be done (including dates or timeframes)
- be written so an independent third person can understand them
- be capable of being enforced if necessary

### **Common mistakes when drafting court orders**

People often run into problems with court orders because of the following mistakes:

✗ Using vague wording

For example, words like “as agreed”, “reasonable”, or “from time to time” without clear detail.

✗ Not setting timeframes

Orders must say when something must happen. Leaving out dates or time limits makes orders hard to enforce.

✗ Not clearly identifying who must act

Orders should always state exactly which party is responsible for doing what.

✗ Combining multiple actions into one order

Each order should deal with one clear obligation. Long or complex orders can cause confusion.

✗ Assuming shared understanding

Orders must stand on their own. They should not rely on verbal agreements, emails, or past discussions.

✗ Using informal or emotional language

Orders should be factual and neutral, not explanatory or argumentative.

✗ Leaving out what happens if something does not occur

Where appropriate, orders should state what happens if a step is not completed by a certain date.

### Bad examples vs good examples of court orders

#### Example 1: Vague wording

✗ Bad order                      The parties will divide the furniture as agreed.

✓ Good order                      Within 14 days of these orders, the Respondent must deliver to the Applicant the items listed in Schedule A. All remaining furniture will remain with the Respondent.

#### Example 2: No timeframe

✗ Bad order                      The property is to be sold.



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- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Good order | The parties must list the property for sale with a jointly appointed real estate agent within 21 days of these orders, at a price recommended by the agent. |
|--|---|

### **Example 3: Unclear responsibility**

- |  |   |
|--|---|
| <input type="checkbox"/> Bad order             | The mortgage is to be paid.   |
| <input checked="" type="checkbox"/> Good order | From the date of these orders, the Respondent must pay the mortgage repayments on the property until settlement or further order. |

### **Example 4: Too many actions in one order**

- |   |  |
|---|--|
| <input type="checkbox"/> Bad order              | The Respondent is to refinance the property, remove the Applicant from the mortgage, and pay the Applicant their entitlement.  |
| <input checked="" type="checkbox"/> Good orders | Within 60 days, the Respondent must refinance the mortgage in their sole name. Within 7 days of refinancing, the Respondent must pay the Applicant \$120,000. Upon payment, the Applicant must sign all documents required to transfer the property. |

### **Example 5: Orders that rely on past discussions**

- |  |   |
|--|---|
| <input type="checkbox"/> Bad order             | Parenting time will continue as previously discussed.   |
| <input checked="" type="checkbox"/> Good order | The child shall live with the Mother. The child shall spend time with the Father each alternate weekend from Friday at 5:00 pm until Sunday at 5:00 pm. |

### **Key takeaway**

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**If someone who has never seen your case cannot understand exactly what must happen by reading the order alone, the order is not clear enough.**

### **Example Orders**

[https://www.familycourt.wa.gov.au/E/example\\_property\\_orders.aspx](https://www.familycourt.wa.gov.au/E/example_property_orders.aspx)

[https://www.familycourt.wa.gov.au/E/examples\\_of\\_parenting\\_orders.aspx](https://www.familycourt.wa.gov.au/E/examples_of_parenting_orders.aspx)

### ***Commencing Proceedings – the key documents***

The documents you need to file depend on what type of orders you are asking for. The most common situations are explained below.

#### **1. Applying for final orders (starting a court case)**

If you are starting a court case for parenting orders, property orders, or both, you usually need to file:

- a) Initiating Application (Family Law) - This tells the Court what orders you want.
- b) Genuine Steps Certificate - This explains what steps you took before filing (or why an exemption applies).
- c) Affidavit - You need an affidavit if you are asking for urgent or interim orders, or the Court rules require one, or you are relying on an exemption from pre-action steps. Please refer 'Tips for Self-Represented Litigants' on [www.holisticlaw.com.au](http://www.holisticlaw.com.au). Please also refer to <https://www.fcfcogov.au/pubs/preparing-affidavit>.
- d) Financial Statement (property cases only) - This sets out your income, expenses, assets, debts and superannuation.
- e) Family Dispute Resolution Certificate (parenting cases only) - This is required unless an exemption applies.
- f) Notice of Child Abuse, Family Violence or Risk (mandatory for parenting cases) This must be filed in all parenting cases, even if there are no risks.
- g) Questionnaire – Parenting and/or Financial - This is required unless you have filed an affidavit covering the same issues.
- h) Cover letter for urgency

#### **2. Applying for consent orders (no court hearing)**

If you and the other party agree on the orders, you do not start court proceedings.

You file:

- a) Application for Consent Orders
- b) Proposed Consent Orders (using the Court template)
- c) Notice of Child Abuse, Family Violence or Risk (if parenting orders are included)

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A filing fee applies. Consent orders have the same legal effect as court-made orders.

### **3. Responding to an Initiating Application**

If the other party started the case first and If you are responding to an application, you file:

- a) Response to Initiating Application
- b) Any supporting Affidavit (if required)
- c) A Financial Statement (property cases)
- d) A Notice of Child Abuse, Family Violence or Risk (parenting cases)

**You are not disadvantaged because you did not start the case.**

### **4. Filing and service**

Most documents are filed online through [comcourts.gov.au](https://comcourts.gov.au)

Filing fees must be paid at the time of filing (unless you qualify for a reduction)

<https://www.fcfsa.gov.au/fl/fees/fl-fees>

After filing, you must serve the documents on the other party

## ***AFFIDAVITS***

### **1. Formatting**

- a) Times New Roman, 1.5 spacing
- b) Each new fact or topic should have its own short numbered paragraph for easy reference.

### **2. Length**

Affidavits must not exceed 25 pages or include more than 10 annexures in Division 1 , or exceed 10 pages or five annexures in Division 2 proceedings.

**Division 1 = complex matters and appeals,**

**Division 2 = simpler cases and faster resolution.**

### **3. Write in the first person**

Use "I" statements — you are telling your personal account (e.g., "I attended the meeting on 10 January 2025.").

### **4. Stick to facts, not opinions**

State what you saw, heard, said, or did. Avoid giving your personal opinions or conclusions.

### **5. Be chronological**

Present events in the order they happened to make your affidavit easy to follow.

### **6. Include dates, times, and locations**

Specific details make your affidavit stronger and more credible.

### **7. Avoid emotional language**

Stay neutral and factual — avoid blaming, exaggerating, or name-calling.

### **8. Be concise**

Keep your sentences short and direct. Remove unnecessary words or repetition.

### **9. Focus only on what is relevant**

Include only facts that relate to the issues the Court must decide.

### **10. Use headings for different topics**

If your affidavit covers multiple areas (like parenting, property, violence), use headings to organise sections.

### **11. Refer to documents clearly**

If you mention a document, describe it and refer to the annexure (e.g., "**A true copy of the letter dated 1 February 2025 is annexed and marked 'Annexure A.'**").

### **12. Keep annexures to important documents only**

Don't flood the Court with unnecessary documents; only annex key evidence.

### **13. Avoid hearsay**

Only state what you personally know. If you must refer to something you were told, say who said it and when.

Hearsay is when a person gives evidence about a statement made by someone else, to prove the truth of that statement.

1. A mother files an affidavit saying, "My son told me that his father hit him."

This is hearsay because the mother is reporting what her son said, not what she saw.

The Court may accept the evidence but treat it with caution, especially if no other evidence supports the claim (such as a teacher's report, photographs, or medical records).

2. A wife says in her affidavit, "My father told me that he gave \$50,000 to my husband as a gift for us to buy our home."

This is hearsay if it is used to prove the \$50,000 was a gift.

The Court might accept the statement but would prefer a direct affidavit from the father or bank documents to verify the gift.

### **14. Use proper language**



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No slang, jokes, sarcasm, or text abbreviations. Write formally and respectfully.

### **15. Proofread carefully**

Spelling mistakes, typos, and grammatical errors can undermine your credibility.

### **16. Have someone you trust read it**

A second pair of eyes can help spot confusing sections or mistakes.

### **17. Swear or affirm it correctly**

Once finished, you must sign the affidavit before an authorised witness (e.g., a Justice of the Peace, solicitor).

### **18. Keep a clean copy**

After signing, keep a complete signed and witnessed copy for your own records.

### **19. Examples**

- <https://www.legalaid.nsw.gov.au/ways-to-get-help/representing-myself/reading-and-writing-legal-documents/affidavits>
- Recovery Order  
<https://www.legalaid.vic.gov.au/sites/default/files/2022-03/vla-recovery-order-sample-affidavit-october-2021.pdf>
- <https://www.legalaid.vic.gov.au/sites/default/files/2023-01/vla-how-to-run-your-family-law-case.docx>

### ***Service***

#### **What is “service”?**

Service means formally giving court documents to the other party so the Court knows they have received them. Filing documents with the Court is not enough, they must also be served. Do not serve any documents until they have the Court stamp.

#### **Do I have to serve the documents?**

Yes. Any document filed with the Court must be served on:

- the other party (and their lawyer, if they have one), and
- any Children’s Lawyer, if one has been appointed.

You must also file proof of service with the Court.

#### **When do I serve the documents?**

Documents must be served as soon as possible after filing

They must be served:

- at least 7 days before a court event, or
- at least 3 days before an urgent or interim hearing

#### **How do I serve the documents?**

##### **1. Documents that start a case**

(For example: Initiating Application, contravention or enforcement applications)

These documents must be served by personal service.

This means:

- the documents must be handed to the other person, and
- they must be served by someone:
- over 18 years of age, and

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- not a party to the case

You can use:

- a process server, or
- any adult who is not involved in the case.

### **2. Other documents (after the case has started)**

Documents such as:

- Responses
- Affidavits
- Applications in a Proceeding

can usually be served by ordinary service, which may include:

- email (if the person has provided an email address for service), or
- post or hand delivery to the address for service.

### **Which documents must be served?**

Depending on your case, this may include:

- Initiating Application
- Genuine Steps Certificate
- Affidavits (if filed)
- Financial Statement (property cases)
- Parenting or financial questionnaires
- Notice of Child Abuse, Family Violence or Risk (parenting cases)

### **What happens after service?**

After the documents are served, the person who served them must complete an Affidavit of Service. The affidavit must be sworn or affirmed, and then be filed with the Court

You do not need to serve the Affidavit of Service on the other party.

### **What if I cannot serve the documents?**

If you cannot serve the documents despite making reasonable attempts, you may apply to the Court for:

- substituted service (serving the documents another way), or
- dispensation of service (in rare cases)

You must explain in an affidavit what steps you have taken to try to serve the documents.

### **Important reminders**

You cannot serve documents yourself if personal service is required

Service rules are strict, incorrect service can delay your case

Keep copies of everything you file and serve

### *Mindset and Preparation*

1. Understand that family law is complex and emotional — stay calm and focused.
2. Know that being self-represented does not mean the Court will excuse mistakes.
3. Treat your matter as seriously as if you had hired a lawyer.
4. Always be respectful to the Court, regardless of your feelings about the other party.
5. Keep a diary of events, especially parenting and communication issues.
6. Start organising your documents early.
7. Know what orders you are asking the Court to make — be specific.
8. Be realistic about your expectations.
9. Focus on what the Court needs to decide, not personal grievances.
10. Read the information on the Federal Circuit and Family Court of Australia website:  
[www.fcfcoa.gov.au](http://www.fcfcoa.gov.au)
  - a) Family Law: <https://www.fcfcoa.gov.au/fl>
  - b) Representing myself: <https://www.fcfcoa.gov.au/attending-court/representing-myself>
  - c) Etiquette and tips: <https://www.fcfcoa.gov.au/attending-court/etiquette-and-tips>
  - d) Legal words used in court: <https://www.fcfcoa.gov.au/pubs/legal-words>
  - e) Electronic hearings: <https://www.fcfcoa.gov.au/attending-court/electronic-hearings>
  - f) Practitioner and Litigant Guide to Electronic Hearings:  
<https://www.fcfcoa.gov.au/pubs/electronic-hearing-teams-guide>
  - g) Central Practice Direction: Family Law Case Management:  
<https://www.fcfcoa.gov.au/fl/pd/fam-cpd>

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h) Affidavit – Family law and child support:

<https://www.fcfcoa.gov.au/fl/forms/affidavit>

i) Court Fees: <https://www.fcfcoa.gov.au/fl/fees/fl-fees>



### *A final word*

*Going through court proceedings is extremely stressful — emotionally, mentally, and financially. Even when you are well-prepared, the process can feel overwhelming at times. This is normal.*

*Please remember to look after yourself during this process. Get support where you can, take breaks when you need them, and be kind to yourself. Court is demanding, and no one comes through it unchanged.*

*If at any stage you are unsure about what to do next, confused by paperwork, or simply need clarification, please contact us. It is far better to ask a question early than to worry or guess.*

*We are here to help you understand the process and to support you as best we can.*