



Pre Action Procedures

Certain procedures and actions must be followed before making an application to the Federal Circuit and Family Court of Australia (FCFCOA). These procedures apply to self represented parties and those with legal representation. Pre action procedures minimise the costs of protracted litigation and allow for the early resolution of many matters. They can also often narrow the issues requiring a Court decision if proceedings are required.

Parenting Applications

When seeking court assistance for Parenting Orders, the Family Law Act 1975 (Cth) requires parties to first attempt to resolve parenting disputes through Family Dispute Resolution (FDR).

FDR is a form of mediation facilitated by an independent FDR practitioner and is designed to assist parties in resolving parenting disputes as quickly and amicably as possible. FDR focuses on maintaining a working relationship between parties and preserving the children's best interests.

FDR is a swifter and significantly more cost effective way to resolve parenting disputes and can also assist the Court by narrowing issues to be determined should proceedings be required.

Should agreement be reached at FDR, the parties may enter into a parenting plan or apply to the Court for Consent Orders.

If parties do not agree through FDR, a section 60I Certificate will be issued. This certificate needs to be submitted when initiating proceedings in the FCFCOA. Unless a Certificate is submitted or an appropriate exemption applies, the Court cannot accept the application, and the matter cannot progress.

Exemptions to FDR and section 60I Certificate

There are certain exceptions to the requirement to participate in FDR and supply a section 60I Certificate before filing a parenting application with the Court. Primarily, an exemption can be sought where:

- the matter is urgent
- there has been child abuse, family violence, or there is a risk of child abuse or family violence
- a party is unable to participate effectively in FDR due to incapacity or other circumstances
- there has been a breach of an existing Order made in the previous 12 months, which shows a serious disregard for their obligations under that Order

Financial (Property) Applications

Parties must also follow pre action procedures before filing an application for financial or property disputes with the FCFCOA.

Similarly, with parenting applications, anyone seeking to file an application with the Court must first invite the other parties to engage in dispute resolution, such as negotiation, mediation, or arbitration.

The type of dispute resolution suitable for a matter will differ depending on the circumstances, such as the complexity of the asset pool at issue or the amicability of the parties.

If an agreement is reached through dispute resolution, the parties may enter into a financial agreement or apply to the Court for Consent Orders.

Exemptions

Some parties and applications are exempt from participating in dispute resolution before filing an application with the Court to resolve financial matters. Primarily, an exemption can be sought where:

- the application is urgent
- there is family violence or a risk of family violence
- a previous Family Law application has been filed by one of the parties in the last 12 months

Further Obligations

Should a matter be unable to be resolved outside of Court, a person seeking to apply to the Court for Parenting or Property Orders must give the other parties written notice of their intention to initiate Court proceedings. This notice must set out the issues in dispute, the Orders sought, and a genuine offer to resolve the issues. It must also specify a timeframe in which the other parties must reply, which must be no less than 14 days.

Resolving a matter outside of Court is a significantly more time efficient and cost effective method of resolving disputes and can often be much less stressful than Court proceedings. Should a matter still require resolution once all necessary pre action procedures have been followed, an application can be made to the Court for further assistance.

If you have any questions about the above information or would like assistance with your family law matters, please contact us at [5303 0281](tel:53030281) or familylaw@ballaratlawyers.com.au.

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