

FAMILY LAW 101

GLOSSARY OF KEY TERMS

Abuse-in relation to a child means:

- a. an assault, including a sexual assault, of the child; or
- b. a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is an unequal power in the relationship between the child and the first person; or
- c. causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- d. serious neglect of the child.

Address for service

The address given by a party where documents can be served on them by hand, post or some other form of electronic communication.

Adjourn

Defer or postpone a Court event to another day.

Affidavit

A written statement of facts by a party or witness. It is the main way of presenting the facts of a case to the Court. An affidavit must be sworn or affirmed before a person who is authorised to witness affidavits; for example, a lawyer or Justice of the Peace.

Alternative Dispute Resolution (ADR)

All methods of resolving legal disputes which do not involve a court making a decision. Common methods of ADR are Mediation, Conciliation and Collaborative Practice.

Appeal

An application to a higher court to review a decision of a lower court or tribunal.

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Appellant

A person who files an appeal with a court.

Applicant

The individual, organisation or corporation who/which applies to the Court to commence legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts.

Airport Watch List

A list maintained by the Australian Federal Police of children at risk of being removed from Australia in breach of a court order.

Application For Divorce

The forms issued by the court which must be completed to request the court to make an order for divorce

Arbitration

A dispute resolution procedure where an expert person makes a decision to resolve the dispute. In family law, this can only be used for property disputes.

Binding Child Support Agreement

A Binding Child Support Agreement is an agreement entered into by the parents of a child setting out the amount of child support that will be paid by one party to another. Under the agreement child support can be made by way of cash payments or non-cash items, such as payment of school fees and private health insurance. Such an agreement can be entered into regardless of whether an assessment has been done by the Child Support Agency.

Both parties must obtain independent legal advice. This is because each party will be required to provide a certificate signed by their solicitor which is attached to the agreement confirming that legal advice was received in respect to the agreement and in particular, confirming that such advice was received prior to signing the agreement.

Binding Financial Agreement

This is an agreement entered into after the breakdown of the marriage or a relationship that defines how the property or financial resources of either or both parties is divided.

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Call Over (also called a Mention)

An appointment at court where a member of the court goes through the case waiting to come before the court to ensure that the case is ready to be heard and then indicate a date on which it might be dealt with.

Case

The matter before the Court.

Child Dispute Conference

A Child Dispute Conference is a meeting with a family consultant. The conference is ordered by the Court and includes only the parties (children and lawyers are not included). The conference gives the Court a preliminary understanding of the family situation and what issues are in dispute. The conference focuses on what the children need, and can help the judicial officer hearing the case make short-term decisions about arrangements for the child/ren. It may also help the parties reach an agreement. The main purpose of the conference is to conduct a brief and preliminary assessment, but there may also be an opportunity to attempt to negotiate any or all of the issues if time permits.

Child Inclusive Conference (also know as “CDC”)

A Child Inclusive Conference is a meeting with a family consultant that is ordered by the Court and includes the adults and children involved in the matter. Lawyers are not included. The conference is intended to give the Court an understanding of the family situation, and particularly of the child/ren’s experience. The conference can help the judicial officer hearing the case make short-term decisions about arrangements for the child/ren. It may also help the parties reach an agreement.

Child Maintenance Order

A Child Maintenance Order is an order made by the Family Law Courts which requires a person to pay child support to another person for the maintenance of a child or children. The order will usually include details such as:

- who is to pay the maintenance;
- who is to receive the payment;
- the amount to be paid;
- the frequency of the payment; and
- when such payments are to cease.

These types of orders can be made either by consent of the parties or by judgment of the Court.

An example of a Child Maintenance Order is:

The father is to pay the mother for the maintenance of each of the 3 children of the marriage the sum of \$45 per week being a total of \$135 per week.

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Child Support

The financial support provided for children by parents who do not live together. The child support scheme is administered by the Department of Human Resources (previously the Child Support Agency). A child support formula is applied to determine how much child support is payable.

Consent Orders

A written agreement between the parties that is approved and formalised by the Court as a legally binding Court Order. Consent orders can be in relation to parenting arrangements for children and/or financial arrangements, for example, for the division of property.

Contravention Application

An application made to a Family Law Court to seek a finding that a party has breached a Court Order and various remedies or penalties to that party.

Court hearing – the date and time when a case is scheduled to come before the court.

Court order – the actions the parties or a party must do to carry out a decision made by a court. An order may be either interim or final.

De facto relationship

A relationship between two persons who are not legally married to each other; and not related by family and having regard to all the circumstances of their relationship, have a relationship as a couple living together on a genuine domestic basis. A de facto relationship can exist between two persons of different sexes and between two persons of the same sex.

Discovery/ Disclosure

A pre-trial and ongoing obligation of parties to family law proceedings to make available all relevant documents to the other parties.

Divorce order

An order made by the Court that ends a marriage. The divorce order becomes final one month and one day after it is made, unless it is shortened by order of the Court.

Draft consent orders

A term used to describe the signed agreement which you wish to have made into Court orders.

Divorce order

An order made by a court that ends a marriage.

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Docket system

A system by which each case is allocated to a particular judge who generally manages the matter from commencement to disposition.

Enforcement order

An order made by a court to make a party or person comply with (follow) an order.

Ex parte hearing

A hearing where one party is not present and has not been given notice of the application before the court; usually reserved for urgent cases.

eFiling

The procedure of electronically lodging a document through the Commonwealth Courts Portal.

eLodgment

The procedure of electronically lodging general federal law documents in the Federal Circuit Court.

Family consultant

Family consultants are qualified social workers or psychologists, with skill and experience in working with children and families. They are appointed by the courts to help parents and judges achieve the best outcomes for children. Family consultants are recognised as court experts in relation to children's matters.

Family dispute resolution

A process whereby a family dispute resolution practitioner assists people to resolve some or all of their disputes with each other following separation and/or divorce.

Family Law Act 1975

The law in Australia which covers family law matters.

Family Law Courts

Comprises the Family Court of Australia and the Federal Circuit Court of Australia.

Family law registry

A public area at the Family Law Courts where people can obtain information about the court process and where parties file documents in relation to their case.

Family violence – means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful. A child is exposed to family violence if the child sees or hears family violence or is otherwise exposed to family violence. See

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the Family Law Act, section 4AB, which gives examples. Family violence may also amount to child abuse.

Abuse – in relation to a child means,

- a. an assault, including a sexual assault, of the child; or
- b. a person (the *first person*) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is an unequal power in the relationship between the child and the first person; or
- c. causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- d. serious neglect of the child.

Family violence order

An order (including an interim order) made under a prescribed law of a State or Territory of Australia to protect a person from family violence.

Filing

The process of lodging a document at a family law registry for placing on the court file. This is normally done electronically on the Commonwealth Courts Portal via www.comcourts.gov.au

Financial agreement

A private agreement to opt out of the jurisdiction of the Family Law Courts to deal with property and spousal maintenance. In relation to a marriage, or a de facto relationship, means an agreement that is recognised as a financial agreement under the respective sections of the Family Law Act.

Financial resources

Is a broad term and can include future expectations under wills or trusts, long service leave entitlements, superannuation before it is paid out, actions for personal injury.

Form

A particular document that must be completed and filed at court. Different forms are used for different family law matters.

Independent Children's Lawyer (ICL)

Means a lawyer appointed by a Family Law Court to represent the interests of a child and to form an independent view of the child's best interests, and to present those views to the court.

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Judgment

A decision by a court after all the evidence is heard.

Judicial officer

A person who has been appointed to hear and decide cases; for instance, a judge.

Joint tenants

people who own land together in undivided shares, with a right of survivorship (i.e. on the death of one owner, their interest automatically passes to the surviving owner(s)); the interest cannot be disposed of by will or deed as with tenants in common.

Jurisdiction

The authority given to a court and its judicial officers to apply the law. For example, the courts have jurisdiction under the *Family Law Act 1975* in family law matters.

Lives with

A family law term used to state who a child lives with. Together with 'spend time with' these new plain English terms replace 'custody', 'access' and 'contact' when describing care arrangements for a child.

Maintenance order

An order made by a Court for a financial benefit to be paid by one person to, or for, another which assists the second person to be supported.

Medical procedure application

An Initiating Application (Family Law) seeking an order authorising a major medical procedure on a child which is not for the purpose of treating some malfunction or disease.

Parenting Orders

A Parenting Order is an order which is made by either the Family Court of Australia or Federal Circuit Court of Australia which sets out details relating to the care and living arrangements of a child.

Parenting Orders can be made either by consent if an agreement has been reached between the parties or the court can hear the matter and then make an order.

The common types of orders which are included in parenting orders are:

- Who has parental responsibility for the child;
- Who the child will live with;
- What time the child will spend with the other parent and other family members, e.g. grandparents;
- Where the child will attend school;
- Any other aspect of care, welfare and development of the child.

It is important to note that Parenting Orders do not include orders relating to the financial support of a child (child maintenance/support). Child maintenance and support are separate issues and can be dealt with administratively through the Department of Human Services or privately by way of a Binding Child Support Agreement or a Child Maintenance Order.

Parental responsibility

Parental responsibility means all of the duties, powers, responsibilities and authority that parents have in relation to their child.

If there are no court orders about parental responsibility, each parent ordinarily has parental responsibility for the child. This means that the parents can make decisions about the child independently from each other.

Parenting plan – a written agreement between the parties setting out parenting arrangements for children. It is not approved by or filed with a court.

Party or parties

A person or people involved in a court case; for example, the applicant and/or respondent.

Precedent – a decision made by a judicial officer, which may serve as an example for other cases or orders.

Registrar

A judicial officer of the Court who exercises both judicial and administrative functions; for example, granting of divorces, making orders by consent and deciding the next procedural step in a case.

Registry

How Family Court offices are known. For example, the Adelaide Registry is in the Commonwealth Law Courts building on Angus Street.

Respondent

A person named as a party to a case against whom relief is sought by an applicant. A respondent may or may not respond to the orders sought by the applicant.

Rules

Rules made by the judges that set out the procedures for conducting a proceeding in the Court. Ie. *Family Law Rules 2004* and *Federal Circuit Court Rules 2001*.

Sealed copy

A copy of a document which has an original Court seal stamped on it.

Service

The process of delivering or posting court documents to a party after they have been filed, in accordance with the rules of Court. Service ensures that all parties have received the documents filed with the Court.

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Spend time with

A family law term used to state who a child spends time with. Together with 'live with' these new plain English terms replace 'custody', 'access' and 'contact' when describing care arrangements for a child.

Spouse

A husband or wife, or former husband or wife.

Spouse or de facto partner maintenance

Financial support for a husband or wife, or former husband or wife or a party to a de facto relationship, which has broken down as the case may be.

Subpoena – a document issued by a court, at the request of a party, requiring a person to produce documents and/or give evidence to the court.

Superannuation Information Form

A form required to be used in property cases where there are superannuation interests being considered as part of the property settlement or division. The form is used to seek information from the trustee of the superannuation plan (a Form 6).

Tenants in common

a type of co-ownership where the owners hold undivided shares, without exclusive possession of any part of it; each person may leave their share to someone else in a will (i.e. land does not automatically pass to the co-owners upon an owner's death).

Third party

A person other than the principal party or parties to court proceedings who may in some way be involved or implicated in the proceedings.

Transcript

A record of the spoken evidence in a court case. All court hearings are recorded, except uncontested divorce hearings. The court does not order transcripts in all instances and does not provide transcripts to parties. If a party orders a transcript, they will be responsible for the costs.

Unrepresented litigant

A party to a matter who does not have legal representation and represents themselves before the Court.

Without prejudice

A statement or offer made on the basis that it will not affect a person's legal rights in later court action.

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