

NAVIGATING FAMILY LAW



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ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the traditional custodians of the land that we are meeting on today. I would also like to pay my respects to Elders past, present and emerging, and extend that respect to other Aboriginal people here today.



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SECTION 1 – BEFORE ATTENDING COURT

Part 1: Compulsory Dispute Resolution
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Conferences?

PART 1: COMPULSORY DISPUTE RESOLUTION CONFERENCE/MEDIATION

What is a S60i Certificate and when is it necessary?

Before being able to proceed with parenting orders, individuals must demonstrate either attendance at a compulsory mediation or attempts to attend mediation. This is done by obtaining S60i certificate.

The Family Law Act 1975 requires a person to attend a mediation with a registered (FDR) Practitioner before commencing proceedings for Parenting Orders.

Why mediation?

Mediation is seen as a practical way for separated parents to resolve their dispute, and reach an agreement about ongoing arrangements for the care of their children.

PART 2: COMPULSORY DISPUTE RESOLUTION CONFERENCE/MEDIATION

5 types of Section 60i certificates issued by Family Dispute Resolution Practitioner-

- parties attended Family Dispute Resolution (FDR) and all participants made a genuine effort to resolve the issues in dispute, or
- parties attended FDR but one or more of them did not make a genuine effort to resolve the issues in dispute, or
- a party did not attend FDR due to a refusal or failure of the other party to attend, or
- a party did not attend because the practitioner did not consider it would be appropriate to conduct FDR, or
- parties began FDR, but after the commencement of the mediation the practitioner decided it was not appropriate to continue.

COMPULSORY DISPUTE RESOLUTION CONFERENCE/MEDIATION

A certificate is not necessary where:

- ◉ only interim orders are sought (these orders generally operate until the case has a final hearing). However, if final orders are being sought in the initiating application then a Certificate is required.
- ◉ the orders are being made by 'consent', i.e. with the agreement of both parties
- ◉ an application is being made pursuant to The Hague Convention
- ◉ applications relating to Child Support, or
- ◉ an amended application for parenting orders.

COMPULSORY DISPUTE RESOLUTION CONFERENCE/MEDIATION

What are the exceptions to attending mediation?

Section 60i(9) of the *The Family Law Act* 1975 sets out exemptions from providing a Section 60I Certificate –

- ◉ if the matter is urgent
- ◉ if the court considers that there are reasonable grounds to believe that:
 - there has been child abuse and/or family violence by a party
 - there is a risk of family violence by a party, and/or
 - there is a risk of child abuse if there was a delay in the application being considered by the court

COMPULSORY DISPUTE RESOLUTION CONFERENCE/MEDIATION

What are the exceptions to attending mediation?

- if a party is unable to participate effectively, e.g. physical remoteness or an incapacity
- if an application relates to an alleged contravention of an order made within the last 12 months **and** reasonable grounds exist that the person who has allegedly contravened the order has behaved in a way that shows a serious contempt for his or her obligations under the order.

Seeking exemptions from filing Certificates require:

- filing an Affidavit – *Non-Filing of Family Dispute Resolution Certificate, or*
- if an Initiating Application is being filed, seeking both interim and final orders, the information in support of the exemption from filing a Certificate can be included in the Affidavit.

PART 3: WHO CAN CONDUCT DISPUTE RESOLUTION CONFERENCES?

The Family Relationship Centre & Relationships Australia

- ◉ Offices can be found in most major areas
- ◉ arranges free mediations for separated parents to assist them to reach an agreement about their parenting issues.
- ◉ The process involves the parties attend separate intake interviews and then a joint session with both parties (in different rooms)
- ◉ Relationships Australia operate similarly, conducting individual intake sessions and charges fees in certain cases, based on the circumstances of the parties

WHO CAN CONDUCT DISPUTE RESOLUTION CONFERENCES?

Private mediations

- ◉ many lawyers and social workers are approved by the Attorney General's Department to conduct mediations and issue Section 60i certificates
- ◉ private mediation session can be arranged quickly, but the mediator will charge a fee
- ◉ private mediators do not arrange intake sessions but request the parties to complete an 'intake form' which provides a background to the dispute.

WHO CAN CONDUCT DISPUTE RESOLUTION CONFERENCES?

Legal Aid Queensland

- ◉ Person applying for the grant of aid for the mediation is financially eligible and meets the 'merit test' imposed by Legal Aid.
- ◉ In some cases, Legal Aid may grant a person funding for a mediation but he/she may have to make a contribution to their legal costs depending on their income.
- ◉ Application for a Legal Aid grant can be done through a private solicitor or by attending a Legal Aid office
- ◉ There is no 'intake interview'

SECTION 2 - COMMENCING PROCEEDINGS IN THE FEDERAL CIRCUIT COURT AND THE FAMILY COURT

Part 1: Federal Circuit Court and Family Court

Part 2: Documents Required

Part 3: Service of Documents

PART 1: FEDERAL CIRCUIT COURT AND FAMILY COURT

Both the Family Court and the Federal Circuit Court apply the *Family Law Act 1975* to determine family law issues. However, both Courts operate under different rules and procedures. The Family Court has jurisdiction to hear all family law matters except divorce.

Family Court

Assists in determining complex family law matters including:

- ◉ International child abduction
- ◉ International relocation
- ◉ Serious allegations of sexual abuse of a child
- ◉ Special medical procedures such as gender reassignment

Federal Circuit Court handles less complicated matters and can hear other federal law matters. Most cases start in this court, therefore deals with a higher volume of cases.

PART 2: DOCUMENTS REQUIRED

Documents required to be filed with Federal Circuit Court seeking parenting orders:

- ◉ An Initiating Application(generally seeking both interim and final orders)
- ◉ an Affidavit
- ◉ a Notice of Risk

DOCUMENTS REQUIRED

Initiating Application

- ◉ details the orders that the person is asking the court to make
- ◉ can be filed 'online' and if urgent hearing date is being sought the application must be sent to the Court
- ◉ a Registrar will consider the application and decide whether it is listed before the court on an 'urgent' basis.
- ◉ once filed the date of the first court appearance will appear in the top right-hand corner of that document.

DOCUMENTS REQUIRED

Affidavit

- ◉ a person's 'story to the Court' , a sworn statement of the evidence that will be presented by a party or witness in the case about issues in dispute between parties.
- ◉ must be served on all parties, including the Independent Children's Lawyer, if appointed
- ◉ must be filed in the Federal Circuit Court when an Application or Response is being filed for both interim and final orders.
- ◉ can be complex, it's recommended advice be sought from a Community Legal Centre, Legal Aid or a private lawyer before filing

DOCUMENTS REQUIRED

Notice of Risk

- ◉ a form which must be filed by any person who files an Initiating Application or Response seeking parenting orders.
- ◉ the purpose is to identify a wide range of risks to children in parenting matters e.g. drug and alcohol abuse, mental health issues, domestic violence etc.
- ◉ enables child protection authorities to become involved in the matter at the earliest opportunity to assist the court in early intervention
- ◉ is filed in the Federal Circuit Court and a similar document is filed in the Family Court, known as a 'Notice of Child Abuse', 'Family Violence' or 'Risk of Family Violence.'

DOCUMENTS REQUIRED

Commencing proceedings in the Family Court

Documents to be filed when seeking final parenting orders:

- ◉ Initiating Application
- ◉ Section 60I Certificate
- ◉ Copy of child's/children's birth certificates
- ◉ Affidavit (if interim orders are being sought)

When filing documents in both the Federal Circuit Court and the Family Court it is necessary to file the original and at least photocopies so that there is a copy for each party. If there are more than two parties to the proceedings additional copies will have to be filed with the Court.

PART 3: SERVICE OF DOCUMENTS

- ◉ Once documents have been filed at the Registry sealed (stamped) copies will be returned and service must be effected as soon as possible.
- ◉ If eFiled, the sealed (stamped) documents must be printed
- ◉ The court will not arrange service of documents. If the other party does not appear at Court, it's necessary to show that the documents have been served
- ◉ All documents filed at Court must be served on the other party
- ◉ If an Initiating Application is being served, it must be done by hand and by a person who is not a party to the proceedings and who is over 18 years.

SERVICE OF DOCUMENTS

- ◉ A Process Server can be arranged (for a fee). They will complete an Affidavit of Service to verify the documents have been served
- ◉ If the other party being served refuses the documents, the person serving them may place them in the presence of the person to be served and tell the person what they are.
- ◉ Once the party has been served, they must file and serve a Response and other documents on the Applicant.
- ◉ If the Applicant is represented by a lawyer, the documents can be sent to that lawyer if he/she agrees that the documents may be served on him or her.

SERVICE OF DOCUMENTS

- ◉ The lawyer will sign an ' Acknowledgement of Service' to acknowledge being served
- ◉ If service is effected late, documents showing that service must still be filed with the court, and any issues related to late service, if raised, will be dealt with by the Judge.
- ◉ Aside from applications commencing proceedings and subpoenas requiring attendance of a person, all other court documents, including a Response, can be served by **ordinary service**

This means the documents can be:

- ◉ served by hand but a signed Acknowledgment of Service from the other party is not required, or
- ◉ posted to the person's residential address, or
- ◉ sent to the person by electronic communication, or
- ◉ if a person does not have a contact address, by delivering, posting or sending by electronic communication to their last known address.

SECTION 3 - PROCESSES INVOLVING CHILDREN

Part 1: Child Dispute Conferences

Part 2: Family Reports

Part 3: Independent Children's Lawyers

PART 1: CHILD DISPUTE CONFERENCES

A Child Dispute Conference (CDC) is:

- ◉ a meeting attended by the parties and children, conducted by a Family Consultant (FC). Lawyers are not included.
- ◉ ordered by the Court, to give a preliminary understanding of the issues in dispute between parties.
- ◉ focuses on the needs of the children & can help the Judge implement short term arrangements for the child/ren.

The information obtained by an FC is not confidential and can be reported to a Judge.

CHILD DISPUTE CONFERENCES

- ◉ If a Judge orders a CDC, this is generally given in court. Details will also be included in the Order issued by the Court, which is sent to all parties
- ◉ participation is mandatory and if a person fails to attend there may be delays and additional costs
- ◉ FC's must advise the Court if a party doesn't attend, only in exceptional circumstances e.g. domestic violence, can appointment changes be made
- ◉ FC's will interview each party separately and may suggest speaking to parties together. A joint interview will only occur if both parties agree.
- ◉ child/ren will generally be interviewed separately, depending on their age

CHILD DISPUTE CONFERENCES

- ◉ The FC will have access to all court documents and be appraised of all relevant issues.

The FC will focus on-

- ◉ issues of risk, such as domestic violence
- ◉ how the dispute is impacting on the children
- ◉ the ability of the parents to work together, and any possibilities of resolving the matter
- ◉ the child's/children's needs

The FC will complete a 'Memorandum to Court' once the CDC has concluded, detailing their assessment of the matter, including advice to the Court about arrangements or processes to be implemented to manage the matter

CHILD DISPUTE CONFERENCES

- ◉ The Memorandum will be released either to the parties or lawyer(s) prior to the next Court hearing and it is possible that the parties can reach an agreement after reading the Memorandum.
- ◉ If they do, they can submit Consent Orders to the Court (see below). If the Court makes the Order the matter will be finalised and parties won't need to return to Court.
- ◉ The Memorandum is admissible in court as evidence in a matter but can't be shown to anyone other than the parties and their lawyers.
- ◉ It is an offence under Section 121 of the *Family Law Act 1975* to publish or circulate to the public, any part of the proceedings which identify a party, witnesses or certain other persons.

PART 2: FAMILY REPORTS

- ◉ Preparation of a Family Report will be ordered by the Court and the parties will attend either at the Court, and be interviewed by a Family Consultant (FC), or attend with a private practitioner.
- ◉ Parties may also commission a report which will be prepared by a Psychologist or Social Worker in private practice.
- ◉ The report is designed to provide independent assessment of the issues relevant to the case and provide the Judge with assistance when making decisions about the best interests of the child/children.

FAMILY REPORTS

An FC may recommend that a report be prepared after a CDC because they believe that issues need greater exploration than within the scope of the Conference.

Issues the report writer will consider/include are:

- ⦿ family circumstances
- ⦿ issues of concern relevant to the care arrangements for the children
- ⦿ opinions expressed by the children, an insight into the relationships and attachments of children, which may include suggestion about which parent the child should live with
- ⦿ As with the 'Memorandum to Court', the Family Report can't be shown to anyone other than the parties involved in the case.

FAMILY REPORTS

- ◉ The report can't be shown to other people, e.g. family members or friends without the permission of the Court.
- ◉ If an order is made for the preparation of a report, the parties will receive a letter outlining time and location of the interviews, which require mandatory attendance.
- ◉ If a party doesn't attend the interviews, the report may not be completed by the date of the next court hearing and this could cause delay.
- ◉ The child, subject to his/her age, will also be interviewed separately from the adults for the FC to ascertain the child's view away from the influence of the parents.

FAMILY REPORTS

- ◉ The Court isn't bound to the recommendations made in the report, this is just one piece of evidence
- ◉ If a party objects to the conclusions, they can be challenged at trial by calling the FC as a witness and can be cross-examined re: contents of the report, their assessment of the family and recommendations
- ◉ Sometimes an expert may be required (e.g. psychiatrist) and may be cross-examined if the matter proceeds to trial and notice of an impending trial must be provided

PART 3: INDEPENDENT CHILDREN'S LAWYERS

An Independent Children's Lawyer (ICL):

- ◉ represents the child's best interests and ensures this is the focus of parenting arrangements.
- ◉ Is impartial, ultimately providing their own view to arrange for evidence to be obtained and put before the Court
- ◉ The Family Court/Federal Circuit Court can order an ICL be appointed where it is considered important for the children's welfare and wellbeing.

INDEPENDENT CHILDREN'S LAWYERS

One of the parties can also seek appointment where:

- ◉ there are allegations of physical, sexual or psychological child abuse
- ◉ there are allegations of family or domestic violence
- ◉ there is intractable conflict between the parents
- ◉ there are significant health issues (physical or psychological) affecting the child, a parent or someone who has a significant involvement with the child
- ◉ there is a proposal to separate siblings
- ◉ there is a proposal by one parent to move with the child
- ◉ there are cultural or religious differences which are affecting the child
- ◉ the child is alienated from a parent

SECTION 4 - THE ORDERS THAT THE COURT CAN MAKE

Part 1: Types of Orders

Part 2: Subpoenas and Inspection of
Documents

PART 1: TYPES OF ORDERS

The Court can make Orders related to parenting or financial issues, or both

Types of Orders:

Final – bring a matter to a close

Interim – made until further or final orders are made

Consent – made with the agreement of both parties and have the same legal effect as if made by a judicial officer after a court hearing

When determining if an Order should be made, the court must have regard for the child/ren's best interests (for a parenting Order) and the justice and equity of the settlement (for a financial order)

TYPES OF ORDERS

Who can apply for Orders?

Parenting Orders

Any person involved in the care, welfare and development of a child may apply (e.g. parents, grandparents, other relatives).

The documents that are required to be filed if Parenting Orders are being sought in the Federal Circuit Court are:

- ◉ an Initiating Application with a Section 60I Certificate
- ◉ an Affidavit
- ◉ a Notice of Risk

TYPES OF ORDERS

Who can apply for Orders?

Parenting Orders

If a child has been removed from –

- ⦿ a parent
 - ⦿ a person who has a parenting order that provides that the child lives with, spends time with or communicates with that person, or
 - ⦿ a person who has parental responsibility for the child
- the Court may make a **Recovery Order**.

A Recovery Order can require the return of a child or authorise a named person (e.g. the police) to find, recover and deliver a child to one of the people listed above

TYPES OF ORDERS

A **Recovery Order** can prohibit the person from again removing /taking possession of the child and can authorise an arrest (without warrant).

A Recovery Order can be sought by a person if:

- ◉ they live, spend time or communicate with the child in accordance with the provisions of a parenting order
- ◉ they have parental responsibility in accordance with the provisions of a parenting order
- ◉ they are the grandparent of the child, or
- ◉ they are concerned with the care, welfare and development of the child

TYPES OF ORDERS

Who can apply for Orders?

Parenting Orders

- ◉ If a child has been removed from a parent, or from a person who has a parenting order and the whereabouts of the 'abductor' are unknown, an application can be made to the Court for a '**Commonwealth Information Order**'.
- ◉ Such an order will be directed to a Commonwealth entity e.g. Centrelink and will require details of a person's whereabouts be provided to the Court.
- ◉ This information will be used by the Federal Police to 'recover' the child, or enable service of court documents on the person who has removed the child.

TYPES OF ORDERS

Financial Orders

- ◉ Can be obtained by both married and de facto couples

If an application is being made in the Federal Circuit Court it is necessary to file:

- ◉ an Initiating Application
- ◉ an Affidavit
- ◉ a Financial Statement

The same documents must also be filed when applying for financial orders in the Family Court but a copy of the marriage certificate must also be filed.

- ◉ If a person is served with an application in which they are named as the respondent they can also apply for Orders. Those Orders are detailed in a document called a '**Response**'.
- ◉ The Response is filed at Court and a copy is then served on the Applicant or his/her solicitor. It can be filed in relation to both parenting and financial issues.

TYPES OF ORDERS

Consent Orders

- ◉ If dispute issues are resolved in the Federal Circuit Court, parties can file Consent Orders
- ◉ If the Court makes the Orders, the matter will be finalised and there will be no need for the parties to go back to court.
- ◉ if there are no current proceedings in the Federal Circuit Court and the parties reach an agreement an **Application for Consent Orders** must be filed in the Family Court. Fees will apply.

PART 2 :SUBPOENAS AND INSPECTION OF SUBPOENAED DOCUMENTS

- ◉ A **subpoena** is a document issued by the Court to require the production of evidence or documents from an individual or organisation.
- ◉ It will be issued for a range of reasons, which aim to provide information to assist the Court in making a determination related to disputed issues.
- ◉ It can be issued to organisations i.e. hospitals, police, Department of Family and Community Services, schools, counsellors, banks etc.
- ◉ Evidence produced by a subpoena will often be used to corroborate a person's care, or damages or discredits the other party's position

SUBPOENAS AND INSPECTION OF SUBPOENAED DOCUMENTS

- ◉ Anyone can be subpoenaed to produce documents to the Court, or to attend Court to provide evidence in person.
- ◉ When issued, the person or organisation named is served a copy of the subpoena and required to comply within a set amount of time
- ◉ In most cases, the person named in the subpoena will be required to produce a copy of their files including notes, records, correspondence, assessments, and/or reports to the Court.

SECTION 5 - ATTENDING COURT

Part 1: Trial Process

Part 2: The Court's response to Breaches of Parenting Orders

Part 3: Security and Protocols at Court

Part 4: Seeking Legal Assistance

PART 1: THE TRIAL PROCESS

The Court may order that, prior to the trial, the parties exchange and lodge a 'Case Outline Document' or 'Case Summary Document'. This document must be filed and served prior to the first day of a hearing before a Judge.

It includes:

- ◉ Details of the orders being sought
- ◉ A list of the witnesses that are proposed to be called in the case
- ◉ A brief chronology of relevant events

The completed and signed Case Outline Document must be filed with the court together with sufficient copies so that there is a copy for each party.

THE TRIAL PROCESS

- ◉ When a matter is allocated a trial date the Judge will issue directions for the filing and serving of Affidavits.
- ◉ Strict time frames apply in both the Federal Circuit Court and the Family Court and filing Affidavits outside the designated time frame can result in the Judge not considering the contents.
- ◉ If either party wishes to rely on evidence from third parties, to support his/her application, those persons will also be required to file Affidavits.
- ◉ On the day when the matter is listed for trial the parties will have to attend court and answer questions posed by the Judge and by the other party.

THE TRIAL PROCESS

- ◉ At the trial the Applicant will outline their case and the Respondent or their lawyer may ask questions from the evidence being relied upon by the Applicant. That evidence will be set out in the filed Affidavits.
- ◉ Questioning the evidence is known as 'cross examination', when the Respondent gives evidence, the Applicant may cross examine them.
- ◉ If there is an ICL appointed, he/she may also present evidence to the Court and cross-examine the parties and their witnesses.
- ◉ If an 'expert' has been commissioned to prepare a report, such as a FC, psychologist or psychiatrist, that person may also be cross-examined.

THE TRIAL PROCESS

- ◉ When both parties have given their evidence and been cross examined, the Court will then give each of them the opportunity for final comments (closing submissions) in support of his/her case.
- ◉ After the closing submissions, the Judge may make orders and give reasons for the decision. Alternatively, the Judge may reserve the decision to another day.
- ◉ If the decision is 'reserved', the Court will inform the parties of the date when the decision will be delivered, and they then attend at the court to hear that decision.

PART 2:THE COURT'S RESPONSE TO BREACHES OF PARENTING ORDERS

When a parenting order is made, each person affected by the order must take all reasonable steps to comply.

If the Court finds that a person has breached (contravened) the order, without reasonable excuse, because he/she has:

- ◉ deliberately failed to comply with the terms of an order, or
- ◉ made no reasonable attempt to comply with the terms of an order, or
- ◉ intentionally prevented a person who is bound by the terms of an order from complying with it, or
- ◉ assisted a person who is bound by an order to contravene it then a penalty will be imposed.

THE COURT'S RESPONSE TO BREACHES OF PARENTING ORDERS

Exceptions

- ◉ In some cases, the Court will find that there has been a '**reasonable excuse**' for breaching (contravening) an Order.

For example:

- ◉ the person did not understand the obligations imposed by the order, or
- ◉ the person reasonably believed that the actions constituting the contravention were necessary to protect the health and safety of a person (including the person who contravened the order) or the child, and
- ◉ the contravention only lasted so long as was necessary to protect the health and safety of the person who contravened the order or the child.

PART 3: SECURITY AT COURT & COURT PROTOCOL

Security at Court

- ◉ If a person is concerned about their safety, the Court can implement a safety plan with at least seven days notice.
- ◉ A person is required by law to notify the court if there is an existing Domestic Violence Order, and a copy of such Order must be annexed to the Initiating Application.

Court Protocol

- ◉ Arrive at least 30 minutes early
- ◉ A family member or friend (18+) can sit in court with a party
- ◉ Unless approved by the judge, a support person can't sit at the bar table and can't speak on party's behalf
- ◉ Recording devices are not permitted without permission from the judge

SECURITY COURT & COURT PROTOCOL

Court Protocol

Before entering the courtroom a person must:

- ◉ turn off electronic equipment, including mobile phones, and
- ◉ remove hats or sunglasses, unless for medical or religious reasons.
- ◉ Courtesy must be given to the Judge by standing when he/she she enters the court room. When being addressed by Judge, a person must stand and address the Judge as 'Your Honour'.

PART 4: SEEKING LEGAL ASSISTANCE

Legal Aid Queensland (call 1300 651188) provides some funding in family law matters.

In order to be granted legal aid a person must:

- ◉ be financially eligible
- ◉ be able to establish that there is 'significant' dispute between the parties

Advice can also be obtained from a community legal service, but those services cannot provide representation for a person in court.

PROPERTY ORDERS

SECTION 1- Determining Assets under the Family Law Act

SECTION 2- Commencing Proceedings for Property Settlement

SECTION 3- Conciliation Conferences and Private Mediation

SECTION 4- Property Orders and Breaches

PROPERTY ORDERS

SECTION 1 - Determining Assets under the Family Law Act

Part 1: Defining Relationships

Part 2: Financial Orders and Property

Part 3: What is Property?

Part 4: Superannuation

PART 1: DEFINITION OF RELATIONSHIPS IN FAMILY LAW

Married couples and persons who are in a de facto relationship may apply to Court for a Financial Order to determine a financial matter.

Time limits apply in relation to Property Orders as follows:

- ◉ If married – the application must be filed with the Court within one year of the divorce becoming final.
- ◉ If de facto relationship – must be filed within two years of relationship ending

Financial Orders

- ◉ made when a financial dispute is determined relating to the division of property, and can include orders for payment of maintenance
- ◉ A court can make a financial order based on an agreement between the parties (with consent) or after a court hearing or trial.
- ◉ Each person affected must follow it

PART 3: WHAT IS PROPERTY?

- ◉ may be an 'asset' or a 'financial resource'. An item classified as an asset generally has a realisable value, (e.g. real estate, shares, motor vehicles, etc.)
- ◉ A financial resource provides a source of funds or financial support in the future.
- ◉ The Federal Circuit Court (Court which deals with most property matters) will not be concerned if an asset is registered solely (such as shares) in the name of one person. These will not be excluded from the pool of assets.
- ◉ Where value is disputed for items of considerable value (e.g. over \$5000), those items will be valued.

PART 3: SUPERANNUATION

Superannuation splitting law deals with superannuation as a different type of property, and allows separating couples to value their superannuation and split payments.

If an agreement has been reached to split an entitlement, that agreement can be formalised by:

- ◉ a written agreement with evidence of having gained independent legal advice and;
- ◉ Consent Orders (the orders can then be made in chambers without either of the parties having to attend court).

If agreement cannot be reached, proceedings will commence seeking a court order

SECTION 2 - COMMENCING PROCEEDINGS FOR PROPERTY SETTLEMENT

Part 1: Documents Required & Disclosure

Part 2: The Court's Considerations

PART 1: DOCUMENTS REQUIRED & DISCLOSURE

In order to commence proceedings in a Federal Circuit Court it is necessary to file:

- ◉ an Initiating Application
- ◉ an Affidavit
- ◉ a Financial Statement

The same documents must also be filed when applying for financial orders in the Family Court but in that case a copy of the marriage certificate must also be filed.

PART 1: DOCUMENTS REQUIRED AND DISCLOSURE

A duty is imposed on all persons who are parties to proceedings under the *Family Law Act* to provide 'disclosure'.

- ◉ Each party must exchange all information relevant to an issue in the case, including information recorded in a document or stored by some other means such as on a computer until the case is finalised
- ◉ If a persons circumstances change during the proceedings, they must provide details of this change with all relevant documents

PART 2: THE COURT'S CONSIDERATIONS

When applying for a property settlement, the Court determines the application by way of a '**4-step**' process.

1. The asset pool – identifying and valuing assets and liabilities of the parties

2. Contributions - how the assets were acquired, including financial & non-financial contributions

3. The parties' future needs- considering the future needs of each party by taking into account various factors

4. The division must be 'just and equitable'– considering step 1-3, the Court must decide if the division is fair to both parties

SECTION 3 - CONCILIATION CONFERENCE AND PRIVATE MEDIATION

A **Conciliation Conference**, which is conducted by a Registrar of the Court, provides parties with an opportunity to reach an agreement about financial issues arising out of the breakdown of their relationship.

- ◉ If an agreement is reached at the Conciliation Conference it can be formalised by way of Consent Orders, which are binding
- ◉ The Court will order that the parties attend a Conciliation Conference only if they meet certain financial criteria

SECTION 4 - PROPERTY ORDERS AND BREACHES

Part 1: Property Orders the Court can make

Part 2: Breaches of Property Orders

PART 1: PROPERTY ORDERS THE COURT CAN MAKE

The Court can order that:

- ⦿ a party pay money to another party within a specified period of time
- ⦿ a property be transferred or sold
- ⦿ a party sign certain documents so as to effect a transfer of an asset

PART 2: BREACHES OF PROPERTY ORDERS

When a property order is made, each person affected by the order must comply. In the event that one party fails to comply, the other party has several options, namely dispute resolution through mediation or file an enforcement application.

When determining an enforcement application the Court can:

- ◉ seize and sell property (including real estate)
- ◉ order a bank to transfer money to one party
- ◉ order an amount owing to be paid by way of instalments