

When you simply cannot agree

The Court process for parenting matters

Often the most difficult matter to deal with when separating from your partner or spouse is dealing with the reality of having to share time with your children. If you cannot agree on the future parenting of your children by way of negotiation, agreement and mediation between the parents of the children, unfortunately you are left with limited options other than to commence Court proceedings.

Going to Court is often a stressful time for many people. It can also be expensive, both emotionally and financially, and time consuming. The reality of Family Law is that, sometimes this may be the only way to deal with your dispute. It is important to understand, however, that even when Court proceedings are commenced, it is possible to reach an agreement at any stage throughout the proceedings, without the need to proceed any further or attend any additional Court Hearings. In fact, the process that is involved in dealing with parenting matters once proceedings have been commenced was established in such a way to provide every opportunity for the parents to resolve their dispute prior to a Final Hearing of the matter.

Typically, a parenting dispute in the Family Courts involves the following process:

The first thing you need to do before commencing proceedings is to attend at a Family Dispute Resolution (FDR) Centre, such as *Relationships Australia*, and obtain a certificate from a registered FDR provider. There are some exceptions to this requirement, such as cases involving family violence, child abuse, or urgency. For more information about applying for parenting orders in the Family Courts, see *Before you file – pre-action procedure for parenting cases*.

Once you have obtained the necessary FDR Certificate, you file an Application with the Court, which is known as an Initiating Application. Attached to the Initiating Application will be a detailed Affidavit setting out your position and a proposal for interim and final Court Orders in relation to the time the children are to spend with each parent. An initial Court date will be set, which is usually 4 to 6 weeks from the date of filing your Application, which is largely a procedural Hearing. The first return date is also a further opportunity for the parents and their lawyers to have sensible and meaningful discussions to attempt to resolve the matter.

Your former partner or spouse will then need to be served with the Initiating Application and he or she will be required to file and serve a Response within 7 days of the specified date for the initial Court Hearing. Your spouse will be required to file a Response and a supporting Affidavit which should respond to the matters raised in your Initiating Application, and which will set out their position and their proposal for parenting Orders which they are requesting the Court to make.

At the initial Hearing, the parties will most likely agree on a timetable of how the matter will progress and discuss certain Orders relating to the preparation of a Family Report or therapeutic counselling, for example.

The preparation of a Family Report involves a series of meetings between a family consultant, the parents (or other carers), and usually the children. By involving children early in the Court process, where appropriate to do so, parents are assisted to understand their children's needs and experiences resulting from the separation, and to consider the future arrangements for the family, with the best interests of the children being the overarching consideration.

If, following their involvement in the Family Report interviews and counselling (if appropriate), parents are still unable to agree upon the arrangements for the children, the case will proceed and same family consultant (also referred to as a Family Report writer) will assist the Court by providing their expert opinion and evidence about the children and the family, and what Orders the Court ought to make in relation to the children.

Before the matter proceeds to a Final Hearing before a Judge (also referred to as a Trial), there will be an opportunity for the parties to Mediate. This will be in the presence of an independent Mediator. As referred to above, a Mediation can take place at any point in the matter, whether prior to proceedings being initiated, after proceedings have been initiated and at any point prior to the Final Hearing.

If all attempts to resolve the dispute by agreement have failed, the matter will then proceed to a Final Hearing, where the evidence of the parties and any relevant witnesses or expert opinions will be heard by the Judge. After hearing all of the evidence of the parties, the Judge will then deliver what is referred to as a "Judgement", and make Orders relating to the care of the children.

There is also an ability to appeal a decision of a single Judge, however, this would be determined on the facts and the merits of your matter at the relevant time. .

Summary

It is important for anyone considering separating from their spouse or partner, or those who have already separated, to obtain independent legal advice from experienced Family Law lawyers who can assist and guide you through this process.

If you would like advice, guidance or assistance in relation to parenting and children matters, or any other areas of Family Law, please do not hesitate to contact us on (03) 9347 0355 or via email at info@schembrilawyers.com.au.



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