

What you need to know about interim hearings

This is a fact sheet about some of the important things you need to know about being involved in an interim hearing and generally what to expect.

My matter is listed for interim hearing – what do I do now?

If your matter has been listed for interim hearing in one of the Family Law Courts, then the judge has decided that interim orders need to be made in your case. Interim orders are shorter term orders which are made until you obtain a final order. These may relate to issues regarding parenting, property or both. You may not get the same judge that you have had for other mentions of your matter.

If you are represented by a lawyer they will be able to guide you through what evidence will be put before the judge, and they will assist you to comply with the required timeline set by the Court.

If you are representing yourself, you will be responsible for ensuring all the relevant information you wish the Court to have for the interim hearing is sent into the Court by the date given to you by the judge.

Preparing for your interim hearing

When the Court makes an order listing your case for an interim hearing, in most cases they will also have made orders about what additional documents you need to file and in some cases preparing documents called case summaries.

The judge at this stage may have also specified what the “interim hearing” will be about. A judge will only have a short time to consider an interim application and this may restrict what issues they will consider.

To know how to prepare for the interim hearing, it is very important you have a copy of the orders that set out the timeline for filing of documents and setting the case down for interim hearing. If you are representing yourself and are not sure when your interim hearing is listed, you should contact the National Enquiry Centre on 1300 352 000 or access your court file on the Commonwealth Court Portal. For more information on how to use the Commonwealth Courts Portal, please see Divorce Factsheet 5 ‘How to use the Commonwealth Courts Portal’.

It is important that you comply with the Court's timeline for filing documents as your matter may be delayed (adjourned) if all the relevant material is not on the court file. If you have failed to file responding documents in time or at all, the judge can also make the orders the other party is seeking without having regard to your case. This is called an “undefended hearing”. If you fail to follow directions made by the judge about filing certain documents, etc, a “costs order” may be ordered against you and you may be required to pay some fees of the other party’s solicitor.

What interim orders you are asking the Court to make

You also need to understand what the judge thinks your case is about. When you started your case, you would have filed an Initiating Application if you were the Applicant or a Response if you were the Respondent. Generally, these two documents will set out both the “final” and “interim” orders you are seeking. These documents are what the judge uses to understand what you are asking the Court to do in your case.

However, if you are seeking further interim orders that are not in your initiating application or response, you need to give the Court an Application in a Case and if you are responding to an Application in a Case, the form to use is a Response to an Application in a Case.

You need to be clear as to what orders you want the Court to make. It is always best to obtain some legal advice in relation to the drafting of court documents.

If you want to prepare your own legal documents, you can obtain copies of the forms from www.familycourt.gov.au, www.federalcircuitcourt.gov.au, by calling 1300 352 000 or at your nearest family law registry.

Your affidavit

An **affidavit** is your written statement of evidence and tells the Court why it should make the orders that you are asking for.

Your affidavit should contain facts which support the orders you seek. In the Federal Circuit Court your affidavit for an interim hearing cannot be longer than 10 pages. If it is, the judge may ask you to tell them what 10 pages you would like them to read. In some cases if you file a very long affidavit, potentially more than 100 pages long, the judge may decide that they do not have time to make an

Tips for writing an affidavit

- Divide the affidavit into paragraphs.
- Number each paragraph.
- Keep each paragraph short and deal with one issue only.
- Be specific rather than general. Think about who, what, when, where, and how. Provide exact dates wherever possible. If you can't be exact, make your best estimate.
- Focus on the issues that are relevant (related) to your application.
- When you are writing about a conversation, quote it exactly, or write: ‘On or around [DATE and TIME], [NAME] said to me words to the effect of *“I’m going to my Mum’s. Don’t call.”*’
- Keep your affidavit under 10 pages.
- To attach a document, you should refer to it in your affidavit and then write **“Annexed to this affidavit and marked with the letter “A” is a copy of [DOCUMENT NAME]”**. Write the letter “A” at the top of the front page of the document you are attaching to your affidavit. If you have more than one annexure, the second document should be marked “B” and the third document marked “C”, etc.
- You can attach up to 5 annexures.
- Sign the bottom of each page of the affidavit in front of a Justice of the Peace (JP) or lawyer and complete and sign the “jurat” at the end of the affidavit. This is the statement at the end of your affidavit which sets out when, where and before whom you have signed the affidavit.
- If you have attached a document (annexure) to your affidavit, make sure the JP or lawyer who is witnessing the affidavit signs each document.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the affidavit must also put their initials next to the change. These changes can only be made prior to completing the jurat.

interim decision on that day and adjourn your matter.

Your affidavit should also focus on providing the judge with the relevant information they need to decide the issues in dispute. For example, if the issue to be decided is whether a parent's time should be supervised the evidence should focus on that issue.

What happens at the interim hearing?

When your interim hearing starts the judge normally starts by asking the parties to identify the documents they rely on. You will need to tell the judge which court documents you want them to read about your case. This includes affidavits and any subpoenaed material that has been brought before the Court (see below under the heading 'Tendering court documents').

A judge usually has many cases to deal with each day in Court. The judge may not always have time to make a decision about every case. That is why if you want the judge to give your case time, you need to arrive early and tell this to the judge's associate. If you arrive late you may lose priority and the judge may not have time to make a decision in your case. Depending on your circumstances it may also be a good idea to try and resolve your dispute by agreeing to consent orders. The advantage of this is you have certainty about what orders are made and you can include orders that may not already be in your response or application.

You need to make sure you are at Court and plan to be at Court all day. This is even the case where the Court is quite inconvenient for you to get to and if you have a lawyer. If you do not come to Court, your case may lose priority and court orders could be made in your absence without the Court taking into account your position. If you are not sure when your Court date is you should contact the National Enquiry Centre on 1300 352 000 or access your court file on the Commonwealth Court Portal.

You are allowed to bring support people (over the age of 18 years) with you to Court. If your support person has also prepared an affidavit in the matter, then that person is not permitted to enter the courtroom until after they have given their evidence. Your support person cannot speak for you unless the Court gives special permission. This is rarely given.

Children are not allowed to enter the courtroom. The Court does not have child care facilities and it is not a good idea to bring them to sit in the waiting room, especially children who are the subject of the Court proceedings, unless ordered by the Court. Appropriate child care arrangements should be made for children for each day that the matter is listed in Court. The Court can sit from 9:00 am until after 5:00 pm.

Inside the courtroom

The applicant and their team sit on the left hand side of the long table that is known as the bar table. If you are representing yourself you will sit at the table. If you have a lawyer and/or a barrister assisting you they will sit at the bar table and you will sit directly behind them.

The respondent and their legal team sit on the right hand side of the bar table, with the respondent sitting behind their lawyer if they have one.

If a lawyer has been appointed to represent the interests of the children (an Independent Children's Lawyer) they will sit in the middle of the bar table. Their barrister, if they have one, will sit next to them.

The interim hearing

In an interim hearing the judge will only read your evidence (provided in affidavits, any exhibits and subpoenaed documents), they will usually not require any person to go into a witness box. In some circumstances the judge may want either party or other witnesses to give limited evidence in the witness box, depending on if the judge has time, the nature of the case and any other relevant factors.

Usually the judge has read the material that is before the Court. If you do not have a lawyer you will need to be prepared to direct the judge to important sections of your affidavit. It is also important you can direct the judge to a document that sets out what interim orders you are seeking. The judge may also ask you whether you are seeking some or all of the interim orders.

Tendering documents

During an interim hearing you can give loose documents to the judge that support your case. Once these documents are evidence they are called “exhibits”. When you hand up documents like this in Court it is called “tendering a document”. It is important if you plan to do this, you have already shown the other parties in your case a copy of the document or have enough copies of the document to show the other parties before your case is called into Court.

Subpoena documents

Often parties choose to issue a request on organisations (e.g. schools, doctors) to provide relevant documents to the Court. This is called a subpoena. Each party or their lawyer, if they are represented, will have the opportunity throughout the course of a matter to inspect these documents upon them being produced to the Court, before hearings. The subpoenaed material is available in the exhibit room at the Court on business days. Check each Court for opening times. You may need to make an appointment.

If there is subpoenaed material and you don't have a lawyer you will have to have read this thoroughly and be able to direct the judge to important sections of the subpoenaed material. It is really helpful to use tabs/post-it notes to mark important sections of the material as you cannot mark the material. Photocopy access may be granted which will allow you to mark your own copy however this is rare.

At the interim hearing all of the subpoenaed documents are brought into the courtroom and a party can draw the judge's attention to those documents by asking the judge to “tender” them. If you intend to do this, it is always preferred by the Court if you already have a written list of what subpoena documents you intend to rely on and where the judge can find them. That is why it helps to have already marked the pages you want a judge to look at with posted notes or tabs before the day of your hearing.

Oral evidence

If you are required to give oral evidence these are a few key points:

- You will be asked to step into the witness box and asked to swear to tell the truth either by oath or affirmation (non-religious).
- If you are representing yourself, the judge will have specific questions that he/she will ask you. If represented, your lawyer will ask you those questions.
- The other party or their lawyer may then ask you questions which is called cross-examination. If there is an Independent Children's Lawyer they may also ask questions. Generally these questions test the evidence which you have previously given. Cross-examination is rare in interim hearings.

- Your lawyer or the judge may ask you some questions if any issues need clarifying.

Submissions and addressing the judge

After identifying documentary evidence or hearing any oral evidence, during an interim hearing the judge will give each of the parties in the case a chance to make an argument based on the evidence about what orders should be made. Generally, the Applicant will go first, then the Respondent and/or the Independent Children's Lawyer. Everyone will get their turn to do this.

This is called making submissions to the judge. If you are self-represented this is your opportunity to persuade the judge about how the law and evidence in your case supports the orders you are seeking. If you plan on making any submissions it is important you get legal advice, because your submissions must relate to the law. It will be very hard to make good submissions without knowing what law applies in your particular situation.

- During this process, you should show the Court and other party the proper level of respect. Do not cut the other parties off during their submissions unless you have a legal objection to what they are saying. It is not enough that you disagree with what the other party is saying. If you disagree with what someone is saying you can tell the judge this when you have your chance to speak. It is wise not to interrupt or show any emotion during the submission of the other party's solicitor or barrister.
- If you do have a legal objection, stand and tell the judge of your objection. The judge will then determine whether the objection is valid or not.
- Each party will take turns to direct the judge to the important evidence in their case. If you are the Applicant, once the Respondent finishes making their submissions a judge will often ask if you have anything to say in response. This allows everyone the chance to respond to what has been said.

Courtroom etiquette

- Always make sure you do what you need to do to present yourself in the best way to the judge.
- Always address the judge as "Your Honour" and always stand up when addressing the judge.
- If the judge is sitting when you enter the courtroom bow to the judge as you enter. You must do the same when you leave the courtroom. A judge will have questions while lawyers or parties are making their submissions about what decision needs to be made. It is important that if the judge interrupts you while you are talking you stop, listen carefully to them and quickly answer any questions they have.

Judgment and when orders are made

Depending on the type of matter and the amount of evidence before the judge, the judge may choose to make their decision on the date of the interim hearing or take time to consider their decision and say what they have decided on another day. The judge may write out the "reasons" for their decision or they may say this in open Court.

It is important to listen carefully to the judge's decision and to write down the orders that are made. You can ask the Court to repeat the orders if you have missed any. If you do not understand the orders (and do not have a lawyer) you can request the judge to explain them to you once they have finished speaking.

Remember that court orders take effect the moment the judge says them in Court.

The Court will only give hard copies of court orders in exceptional circumstances. Generally, to see a written copy of your court orders you will need to access them on the Commonwealth Courts Portal. Please note it is not always possible for the judge's written orders to be uploaded to the Portal the same day they are made.

If you have trouble accessing your court orders, you can contact the Family Law National Enquiry Centre on 1300 352 000 or use their LiveChat service at www.familycourt.gov.au and www.federalcircuitcourt.gov.au.

Important things to consider after interim orders are made:

- If there is an error arising from the order in the form of accidental slip, mistake or omission, you may be able to seek a correction to the orders under the "slip rule". If you think that this has happened, you must first raise the matter with the other party's solicitor or ICL. Do not approach the Court without first approaching the other party or ICL. An error that can be corrected includes things such as the spelling of a child's name or date of birth or date/s or time is to occur for a party. For a change to occur, there must be agreement for all involved, including the judge.
- If you think the judge made an error under the law, you may in limited circumstances be able to successfully appeal the interim orders. You can do this by filing a **Notice of Appeal**. Be aware that the time limit to appeal is 28 days after the orders were made. It is very important to seek specific legal advice if you are considering filing an appeal, particularly following interim orders. An unsuccessful appeal may result in significant delays in your case and may result in you having to pay another person's legal costs. Also be aware that unless the interim orders made relate to parenting, then you need to ask permission before you are allowed to appeal. This is called "seeking leave".
- Generally, you cannot seek a further interim hearing unless you can demonstrate there has been a significant change in circumstances, since the last orders were made. Choosing to file further interim applications where there has not been such a change, may result in significant delays in your case and may result in you having to pay another person's legal costs. If you are considering doing this, you should seek specific legal advice first.
- If the other party does not follow the interim orders, you can file a Contravention Application with the Court. Be aware that if your interim orders were made more than 12 months ago, you may need to try family dispute resolution before being able to file a Contravention Application. Contravention Applications can be technical and so you should seek specific legal advice before deciding to make this type of application.
- Interim orders will continue until further orders are made unless the order says otherwise.

Getting legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case.

You can seek legal advice from a Legal Aid office, Community Legal Centre or a private law firm.

- LawAccess NSW: contact 1300 888 529 or see www.lawaccess.nsw.gov.au
- Legal Aid Early Intervention Unit: contact 1800 551 589 or see www.legalaid.nsw.gov.au
- Legal Aid Domestic Violence Unit: contact (02) 9219 6300 or see www.legalaid.nsw.gov.au
- Aboriginal Legal Service: contact 1800 733 233 or see www.alsnswact.org.au
- Salvos Legal Humanitarian: find an Advice Bureau at www.salvoslegal.com.au/expertise/humanitarian-free-legal-service/

- Women’s Legal Service NSW: (02) 8745 6900 or 1800 810 784 DV Legal Advice Line
- NSW Law Society Solicitor Referral Service: (02) 9926 0300 or see www.lawsociety.com.au/for-the-public/going-court-and-working-with-lawyers/solicitor-referral-service

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice. You can contact the National Enquiry Centre on 1300 352 000 or go to www.familycourt.gov.au, www.federalcircuitcourt.gov.au.

This fact sheet uses the term “judge” to refer to either a judge of the Family Court of Australia or a judge of the Federal Circuit Court. This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact LawAccess NSW on 1300 888 529.

Family Law Early Intervention Unit: 1800 551 589 • Legal Aid NSW www.legalaid.nsw.gov.au