



GLOSSARY

A BRYANT MCKINNON RESOURCE

The Family Law team at Bryant McKinnon Lawyers has prepared this Glossary to assist you in dealing with lawyers and your involvement in the court process. This publication is not intended to be, and should not be used, as a substitute for expert legal advice in any specific situation.

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A

Affidavit

A written statement of fact that its author swears to be true. This document is the equivalent of evidence given verbally in court: it must be the truth, the whole truth, and nothing but the truth.

Alimony

Does not exist in Australia – see [spouse maintenance](#).

Appeals

A court hearing (usually in a superior court) held to challenge the outcome of a previous decision.

Applicant

The person who files the first document with the court seeking a specific outcome. Those documents are also given to the other party in the proceedings (the [respondent](#) – see [glossary listing](#)).

Application for Final Orders

A document filed with the court stating what you want it to decide on a final basis.

Application in a Case

A document filed with the court stating what you want it to decide on a temporary basis while the arrangements for a final agreement are still being worked out.

B

Barrister

A lawyer who specialises in court work and complex matters.

C

Capital Gains Tax (CGT)

CGT may be payable on the profits made on the sale of assets including [Self-managed Superannuation Funds](#). It is calculated by subtracting the initial cost (plus allowances for inflation increases) from what you receive when you sell or dispose of it. The family home is usually exempt from CGT but investment properties and many other assets that you have acquired may attract the tax.

Child Support Agency

Formerly the government organisation that is responsible for administering the child support scheme and transferring payments from one parent to another. These duties are now within the Department of Human Services.

Circuit

A process where a judge or magistrate visits remote, rural or regional areas to hold court hearings.

Collaborative Law

A method where lawyers commit to negotiating rather than pursuing litigation in court.

Conciliation conference

A compulsory conference that is held before an impartial third party who Works for the court. This is held prior to your court hearing in an attempt to reach an agreement between the parties and avoid final litigation.

Consent Orders

Binding orders made by the court with the agreement of both parties. Usually these will have worked out by the parties and their lawyers outside the court and then a judge or registrar will approve them.

Contravention Application

An application made when a previous court order has been breached by the other party. The Court may impose penalties for a breach.

Custody

Custody as well as contact and guardianship are no longer concept that exists under the *Family Law Act*.



De Facto Relationship

The relationship of a couple who live together without being married. Before 2009, de facto relationships did not fall within Family Law and instead were dealt with by each state. In many respects de facto couples are dealt with the same way as married couples in Family Law. There are some significant differences. The Family Court has jurisdiction to separate property interests only if the de facto relationship lasted at least two years (with some limited exceptions).

Divorce

The legal process that dissolves a marriage. This can only occur once a Married couple has been separated for a year.



Family Consultant

A Family Consultant is an employee of the court, usually a psychologist or a social worker who specialises in child and family issues. These consultants often prepare family reports for use in disputes about parenting orders for children.

Family Court of Australia

A court that deals exclusively with more complex Family Law matters, including those involving large asset pools and difficult children's cases.

Family Court of Western Australia

The court that deals with Family Law matters and cases in Western Australia.

Family Law Rules

The rules of the Family Court of Australia that are set by the judge of that court to regulate the procedures and processes for the conduct of Family law matters.

Family Violence

Family Violence is defined in the Family Law Act to be 'violent, threatening or other behaviors 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'. The definition also includes a non-exhaustive list of behaviors which could be family violence.

Federal Circuit Court

The court that deals with the majority of Family Law cases in Australia (except WA). Unless the issues are of significant complexity, a Family Law case is likely to be heard in this court.

Filing

The process of providing a document to the court to be added to the court file. These documents need to be formatted correctly and processed by the court for a judge to consider them.

Final Orders

Orders made by the court on a permanent basis.

Financial Agreement (commonly referred to outside the legal context as pre-nup)

An agreement made between married or de facto couples before, during, or after the relationship commences. It takes the power away from the court to divide your property. They allow you

to make your own decisions about how your property will be divided. There are significant risks attached to Financial Agreement and advice from a Family Law Accredited Specialist is crucial.

Financial Resource

Some financial entitlements are not regarded as property in Family Law but may be taken into account as a resource, such as potential payment from a family company or a claim to an asset that might arise in the future. These will generally be taken into account at step 3 of the property distribution process as an adjustment to one party or the other.

Financial Statement

A document filed with the court in property matters that states the current position of your finances including any and all assets and debts.

Flagging Order

An order that freezes the distribution or payment of superannuation. This type of order is made to protect the asset until access is agreed.

Full Court of the Family Court

A rotating group of three Family Court of Australia judges that meets to decide appeal cases.



High Court of Australia

The highest court in Australia that has final word on Family Law cases. It is not common for family Law cases to be heard in the High Court.



Independent Children's Lawyers

An ICL is a representative for the child or children appointed by the Court. The role of the ICL is to promote the child's best interests by preparing and putting forward evidence for the court to consider. The ICL is not necessarily required to follow instructions given by children.

Injunction

An Order of the Court requiring an individual to do or to cease doing a specific act.

Interim Order

An order that is made during the progress of your case, to sort out matters that need to be dealt with before the final trial takes place. An interim order is usually only temporarily in place.



Judge

A person with many years' experience in the law who is appointed by the government to determine complex cases in the Family Court.



Litigation

The process of going to court. This could be a short process, or a very drawn out one, depending on your case.



Magellan Program

The Magellan program in the Family Court of Australia deals with cases which involve serious allegations of abuse of children including both physical and sexual abuse.

Maintenance

Where one former spouse provides ongoing financial support to their former spouse or their child(ren). Spousal maintenance is usually only ordered for a limited time as it is often better for separating spouses to have a 'clean break' in their financial relationship.



Nullity

An order of the Family Court of Australia that the marriage in question was not legally valid and, as a result, that the parties were never legally married.



Order

An order of the courts is a decision which is binding against all parties – it may be in relation to a financial issue, about arrangements for the children or it may be a direction as to how the proceedings will be conducted. An order may be for a limited time (such as, until another order is made or until the next hearing) or it may be final.



Parties

The people involved in a dispute in court – usually the couple who are no longer together. Other parties to the case may include those who have a financial interest in your property or those with caring responsibilities for children.

Presiding Officer

The judge or federal magistrate who oversees your case from start to finish.

Procedural Order

An order made by the court about the way your case will progress. This might be giving a date of a hearing, requiring documents to be filed or providing for other administrative and organisational requirements.



Registrar

An experienced Family Lawyer who is hired by the government to work for the court. They may hold conferences to try to help couples reach an agreement, and also manage some procedural orders. Registrars can also grant divorces.

Registry

Each individual court is described by its 'registry' which is its geographical location, for example, the Sydney Registry and the Parramatta Registry. Each court operates its own systems within the rules and regulations of Family Law.

Respondent

The person who received the document filed in court by the other person (the Applicant). The Respondent then has the opportunity to respond with their own court documents.

Relocation

Where one parent wants to move a long distance away from the other parent (often interstate or overseas) and take the children with them. A parent should not move in this manner without a court order permitting them to do so.

Rules of Evidence

Rules relating to what evidence (including documentary evidence) may be admitted in the courts and what will not. A well-known rule of evidence relates to the inadmissibility of 'hearsay evidence'; ie when someone says that they heard something said.

Rules (of the court)

The Family Court of Australia and the Federal Magistrates Court have their own rules governing processes and procedures.



Scale (of costs)

The scale is the fee, set by regulations, that lawyers may charge for their work. The reasonableness of the legal fees you are to be charged will be referenced to the scale that applies in your court.

Separation

The point at which a relationship between two people has irretrievably broken down.

Separation Under One Roof

Where a married or de facto couple separates but continue to live in the same home. A couple who have separated under one roof may require legal assistance to establish their date of separation, relevant for divorce proceedings.

Splitting Order

An order to divide one person's superannuation between two parties. The superannuation remains inaccessible until you are old enough to receive it.

Spouse Maintenance

See Maintenance.