

Interim hearings and interim orders in family law matters

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When families are involved in Court proceedings, the Court may make interim orders. Interim orders are usually made when there is an urgent issue to be dealt with or for temporary matters. Final orders will then be made by a Court after a contested hearing (or “final trial”) unless parties have agreed to orders by consent prior to a matter proceeding to trial.

How do interim orders work in the Family Court?

When Court proceedings are commenced, the party filing the Court application for orders sets out if they are seeking interim and final orders or just final orders. If the party is seeking interim orders, the Court will generally program the matter to an interim hearing. When one party files an application, the other parties to proceedings are required to file a response.

Interim orders for parenting matters could include:

an application for the appointment of a Single Expert Witness;

an application for family report writer; or

for a child to attend upon a particular therapist.

Interim orders for property matters could include:

an application for the appointment of a valuer to value a business or real estate; or

for interim spousal maintenance.

Final orders for both parenting and property matters are the ultimate outcome the parties are seeking.

What happens at a Family Court interim hearing?

Depending on which Court you file your application in, whether the Federal Circuit and Family Court of Australia or the Family Court of Western Australia, an interim hearing is usually programmed within three (3) months of your application being filed (or earlier if your application is listed urgently).

At an interim hearing, there is no cross-examination of witnesses. As there is no cross-examination and the Court is largely reliant on the written material (often referred to as “the papers”), the Court is unable to make any finding of fact.

At an interim hearing, the Court will often determine a discrete issue which cannot wait until a final trial; for example, a party wishing to travel overseas to see family or the appointment of a valuer to value a home.

After the interim hearing, the Court will often try and make orders progressing the matter towards trial and providing for orders which assist the parties in:

narrowing the issues in dispute; and

having evidence the Court will need prior to a final hearing (for example, Single Expert Witness reports).

What do I need to know if I have an interim hearing in the Family Court?

Prior to the interim hearing

When the matter is listed for interim hearing, there may be an opportunity to file further evidence before the Court. This could include affidavit material (of both the party and relevant witnesses), a case outline or an updated Minute of orders sought.

When the Court makes the orders, it is imperative the party files their documents on time. Otherwise, the Court may not give the party leave to rely on the material or may adjourn the hearing without notice to either party.

Your affidavit material should be well drafted

The affidavit material you file for an interim hearing is the evidence the Court is relying upon to make the orders you are seeking. As such, it must be drafted carefully.

The person who drafts the affidavit needs to understand:

what material is relevant to the issue in dispute;

what evidence the Court will need so it can make the order the party is seeking; and most importantly

what is admissible.

If evidence filed is hearsay, or a conclusion, or a submission, the Court may strike the paragraph out of the affidavit and deem the party cannot rely on it.

The drafting of affidavit material is a skill which needs to be carefully executed so the party is in the best place to have orders made as to what they are seeking.

At the interim hearing

At the interim hearing, as mentioned earlier, there is no cross-examination.

The hearing usually lasts for less than 2 hours.

Submissions from both counsel are made with submissions drawn from:

the material which is already before the Court;

the law; and

case law.

After submissions are heard, the Judicial Officer will either give judgment immediately (ex tempore) or will reserve their decision for a later date for the parties to attend Court for the

purpose of judgment. Unfortunately, if the Judicial Officer does reserve their decision, parties then have to wait to hear the outcome of the hearing.

Get help from a family lawyer for your interim hearing

It is unusual for a matter to have multiple interim hearings. With the delay in matters proceeding to a final trial, often an interim hearing is crucially important to determine how your matter will run prior to a final trial.

It is important parties are prepared for an interim hearing, with such preparation taking place well before the day, including the preparation of documents before the Court. Importantly, once documents are filed with the Court, it is difficult to amend a party's position or have the document uplifted.

We encourage all parties to seek legal advice before filing any documents with the Court and prior to advocating as an in-person litigant at an interim hearing.

Our team at Meillon & Bright is experienced in both drafting applications and appearing at interim hearings for family law matters.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.