nq women's legal service

Interim Hearings

This workbook provides an overview of the Family Court and the Federal Circuit Court process and procedures.

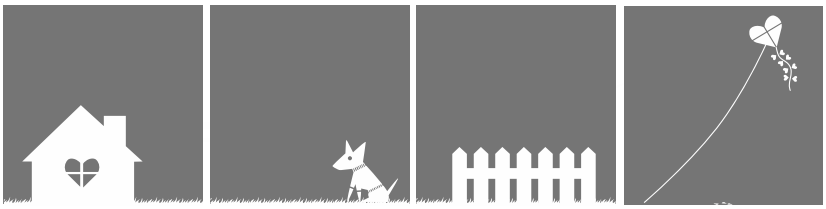
Disclaimer

The guidance provided in this workbook is not legal advice, it is information only. This workbook has been designed for you to use with legal help from a lawyer.

NQ Women's Legal Service believes the information provided is accurate as at May 2013 and does not accept responsibility for any errors and omissions.

nq women's legal service

Contents



Interim Hearings...

Interim Hearings are held when the parties cannot agree on arrangements for their children or property, and the Court needs to make a temporary order, or an order that certain steps take place before a final decision is made. The orders made at an interim hearing will remain in place until there is another Court order, or some other agreement between the parties.

An interim hearing may take place on the very first Court date that is allocated when your documents are filed with the Court, or may occur after an adjournment or other procedure. If you are not sure whether your legal matter is going to have an interim hearing, you should speak to one of our solicitors.

Evidence

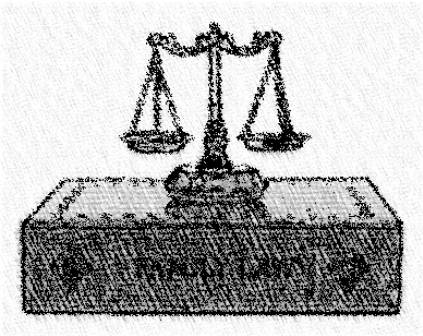
Usually, the evidence that the Court can rely on at an Interim Hearing is the evidence contained in the Court documents which have been filed by the parties, for example:

- Affidavit of the applicant or respondent;
- Affidavit of any other witness;
- Documents attached ("annexed") to affidavits;
- Information contained in the Financial Statement of the applicant or respondent.

Normally, the Court does not require or allow any person to give spoken, or oral, evidence at an interim hearing. It is therefore highly unlikely that you would be required to answer any questions in the witness box, or be required to ask questions of the other party.

Sometimes, the Judge will require additional information or clarification from you. These questions can be answered by a party, or their solicitor, but will not formally be considered evidence in the matter.

If you want the Court to take evidence into account, it is important that it is in an affidavit or financial statement, or provided to the Court as an annexure to an affidavit, otherwise the Court may not be able to take it into account.



Reading the Evidence

At the start of your hearing, the Judge will ask you to "read" your evidence, or ask you what evidence you are relying on. This does not mean you need to read through your affidavit to the Judge, but you need to tell the Judge which documents you are relying on. For example:

Your Honour, I am relying on my affidavit, which was sworn and filed on 30 April 2013 and my financial statement sworn and filed on 30 April 2013.

Your Honour, I am relying on my affidavit, and the affidavits of Bob Jones, Mary Jones and Bill Smith, all sworn on 30 April 2013.

If there are documents annexed to your affidavits, you do not need to tell the Judge you are relying on those annexures, they are considered to be part of your affidavit.

Sometimes, although not often, one or both parties will have issued subpoenas before an interim hearing. If there is information that has been provided by a third party via subpoena (for example the police, a child's school or a hospital) that a party wishes to rely on, they need to advise the Court that they wish to rely on that material in addition to their affidavits or other filed Court documents.

Preliminary Matters

The Judge may ask whether there are any preliminary matters that need to be dealt with before the hearing takes place. Sometimes, one of the parties will let the Judge know there is a preliminary matter. Examples of preliminary matters may include:

- Notifying the Judge that agreement has been reached about some of the issues that had been in dispute, and that there are only a few matters left for the Judge to decide;
- That one or both parties are seeking to rely on additional evidence that has not yet been filed by that party;
- That a party has noticed an error in one of their documents, and they wish to correct that error, by telling the Judge the correct information, before the hearing starts

If there are any preliminary matters, the Judge will usually deal with those matters and finalise them, before moving on to deal with the interim hearing.

Submissions

Because the Court relies only on the written evidence in interim hearings, it is not necessary for any further evidence to be given by the parties. Therefore, the hearing consists mainly of each party making submissions (putting forward aspects of their case) to the Court about why the Court should make the orders that person is seeking.

Submissions should explain to the Judge how your evidence or proposals link with the law, to persuade the Judge that you are seeking the most appropriate outcome.

Examples about Submissions

Julie is seeking orders that her son Simon lives with her and her former partner on a week-about basis. Section 60CC(2)(a) of the Family Law Act states that one of the primary considerations in determining the best interests of the children (and therefore determining appropriate Court orders) is the benefit to the child of having a meaningful relationship with both parents. Julie can submit to the Court that an equal time order allows Simon to have a meaningful relationship with both parents, because Simon will spend weekday and weekend time with each parent, and be involved in the daily routines of each parent on a regular basis.

Wendy is seeking orders that the house she and her former de facto partner Sharon used to live in be sold immediately, as neither of them are living there or can afford the rep ayments since they have separated. The Court must take into account the matters in section 75(2) in determining an appropriate order to make regarding the division of assets. Wendy can submit to the Court that the income of herself and Sharon (s75(2)(a)) and their commitments necessary to support themselves (s75(2)(d)) mean that they can't afford the repayments, and the property should be sold before the bank moves in to sell the property when repayments are not met.

It is important that you have read and understood the sections of the Family Law Act that are most likely to be relevant to your Court matter. The most relevant sections are likely to be:

For children's matters – Sections 60CA – 60CI, 61B – 61F, 65A – 65L

For property orders (married couples) – Sections 71 – 90

For property orders (de facto couples) – Section 90RA – 90MZH

If you have not read these sections, you should ask your lawyer to provide a copy of them, or the most relevant of them to you. If you don't have a lawyer you can access these sections by searching for the "Family Law Act 1975" on the internet, at your local library, at the university library, or online at your local community centre.

Submissions in interim hearings are usually made orally – that is simply saying to the Judge what you think should happen, and why. You should prepare notes, dot points, or an outline to help you make sure you have said everything you wish to say to the Judge.

If you are anxious about speaking in Court, or worried that you will forget what you want to say, you can also make your submissions in writing. If submissions are made in writing, they should be written out formally and logically, using subheadings to assist the Court. They should be written in full sentences, not dot points. You should also prepare several copies of your written submissions, one for each other person in the dispute, one for the Court and one for yourself to keep.

All submissions, whether oral or written, should refer only to information that has been "read" to the Court, such as the information that is in each party's affidavit. They should not contain new evidence. They should attempt to convince the Judge that the orders you are seeking are in the best interests of the children (in children's matters) or are what would lead to a fair and equitable outcome (in property matters).

While submissions are meant to be persuasive, you should remember that their purpose is not to attack or put down the other party. At times, criticism of the other party may be a necessary part of your case, but if it is, it should be dealt with as factually as possible, without the use of unnecessarily cruel or inappropriate words.

For example:

Your Honour, I submit to you that the situation where the Respondent left the children unattended at home for over five hours while he went to the pub was at best very irresponsible and at worst grossly negligent. In the circumstances, I ask you to find that it would not be appropriate for the Respondent to have overnight time with the children at this time;

Is much more appropriate than:

Your Honour, he is a selfish, irresponsible alcoholic who doesn't care about his children and would rather be at the pub and looking after them. He should only ever be able to have supervised time with the children, and it would be better if he had no time at all.

The first example makes sure to refer the Judge to the specific incident that is cause for concern, then uses persuasion to suggest to the Court the orders that are being sought. The second example does not refer to a specific incident, and resorts to name-calling, baseless opinion and asks for orders the Court would be unlikely to make.

Usually, the Applicant makes their submissions first, and then the Respondent makes their submissions. The Respondent must make sure that, as well as making submissions about their own case, they use their allocated time for submissions to respond to any of the Applicant's submissions that they don't agree with.

Submissions in Response

After the Applicant and Respondent have both made their submissions, the Applicant will sometimes be allowed a short further time to respond to any issues raised by the Respondent in their submissions. Sometimes, no issues have been raised that will require a response. If an Applicant does wish to respond, their submissions should be kept very short, and must only respond to the Respondent's submissions – they cannot be new submissions.

After each party has finished their submissions, the Judge may ask further questions about what the parties have said in their submissions, or to clarify the orders that are being sought. If the Judge asks any questions, you should answer them as simply and honestly as possible.

Judgment

Once the Judge is satisfied that he or she has received all of the relevant information, they will indicate to the parties that they intend to make a judgment about the matter.

Sometimes, the Judge will immediately give judgment, but more usually, the Judge will call for a brief adjournment of 10 – 30 minutes while he or she considers the decision. During that period of time, everyone will usually leave the Courtroom, but not the Court building, as the Judge's associate may call everyone back at any time.

On more rare occasions, when the issues are particularly complex, or if the matter has been heard very late in the day, the Judge may allocate another day for everyone to come back and hear their decision. The Judge may give you the date (it could be the next day or later in the week), or if they are not sure when the Court will be next available, you may receive the date in the post or by telephone from the Court. Sometimes, the Court will ask for your best contact details in these circumstances, and you should write them down and hand them to the Judge's associate.

Usually, when making a decision at interim hearing, the Judge will explain their reasons for making the decision before they actually pronounce the orders they will make. As part of the reasons, a Judge will usually recap the evidence given by each party, and the orders each party is seeking. The Judge will then let the parties know which parts of the evidence or submissions they particularly took into account, or which submissions they disagreed with. Sometimes a Judge will make suggestions to the parties about a better way to conduct their matters, or criticise parties for particular behaviour. Then, the Judge will read out the orders they have decided to make.

Examples of Interim Orders

The Court has a wide jurisdiction to make orders about children and property, and the particular orders made will depend on the individual circumstances of your case. However, some general examples of the types of interim orders that can be made appear below.

Some examples of interim orders for children may be:

That the parents have equal shared parental responsibility for the children

That the children spend time with the father each alternate week from after school Thursday until before school Tuesday

That all changeovers of the children occur at the residence of the maternal grandparents

That the mother communicate with the children by telephone each Wednesday at 5.30pm

Examples of Interim Orders Continued..

Some examples of interim orders for property might be:

That the wife be restrained from the disposal of any of the real properties at 123 Smith Street, 456 Jones Street or 78 Main Street, Springfield until further order of the Court

That the proceeds from the sale of the property at 321 Smith Street, Springfield, be held on trust by Bloggs & Co. Solicitors pending further Court order

That the sum of $10,000 be released to the wife and the sum of $10,000 be released to the husband from the proceeds of the sale of the property at 321 Smith Street, Springfield, currently held by Bloggs & Co. Solicitors, by way of partial property settlement

Some examples of procedural orders might be:

That the father file and serve his Response and Affidavit by 4.00pm on 30 April 2013

That the parties agree on and instruct a valuer to prepare a valuation of the property at 123 Smith Street, Springfield with the cost to be shared jointly between the parties

That a Family Report be prepared and that all parties comply with the lawful direction and instruction of the family report writer in relation to participation in any interviews or assessments that the family report writer may require

You should discuss with a solicitor the types of interim orders you wish to seek, and obtain legal advice about the best way to word the orders you are seeking.

After Orders are made

Generally, orders become effective as soon as the Judge makes them on the day of Court. That means that if an order is made for children to commence spending time with the other party, or for a particular party to maintain a property, the obligation to follow the order starts straight away. The written version of the order is posted out to each party, and may take a week or more to arrive.

It is not an excuse that you did not comply with an order because you had not received the written version of the order. We recommend that you write down the orders that the Judge is making, as he or she is making them. If the Judge is speaking quickly, or you do not clearly understand the order, you should politely ask the Judge to say the order again, or clarify with an example. It is important that you ask any questions before you leave the Courtroom. In almost all cases, the Judge would much prefer that you clarify the order at the time it is made, rather than mistakenly not comply with the order because you misunderstood it.

It is also not an excuse that you did not comply with an obligation you have under an order because the other party has not complied with their own obligation. In other words, your obligation to comply with an order is not dependent upon the other party fulfilling their obligations. If it is impracticable for you to comply because of the other party's failure to comply then you should seek legal advice immediately.

The Judge will normally make an order that states when the next Court date is. You should very carefully listen to and record the date and time that you are next required to be in Court. If you are unsure whether you have the right day and time, or you forget, you should ring the Court registry as soon as possible, to ask for confirmation of the next Court date.

What the Court cannot do

There are some things that the Court does not have the power ("jurisdiction") to do at an interim hearing.

Firstly, the Court cannot make findings of fact when the facts are in dispute. For example, if one party's affidavit says "She always hit the children, and I did not agree with physical discipline", and the other party's affidavit says "I never hit the children, it was my former partner who was responsible for discipline", the Court cannot decide at an interim hearing which of those allegations is true. Issues in dispute can only be resolved at a final hearing, when the Court has the opportunity to hear from all witnesses directly by oral evidence.

Secondly, the Court can only make orders about certain types of issues – those issues that they have the power to make orders about, because of the *Family Law Act*. Generally, the Court can make orders that relate to the children or property of the parties, but there are exceptions to this. There are, for example, only very limited circumstances in which the Court can make orders about child support. A Court cannot make orders about where an adult must live. The Court cannot make orders that force a parent to spend time with a child if that parent does not wish to do so. Before you attend your interim hearing, you should seek specific legal advice about the orders that you are seeking, to confirm that they are orders the Court can make.

Generally, the Court cannot make final orders at what is scheduled to be an interim hearing. There may be very rare exceptions to this, but generally the parties are informed well in advance when there may be a chance that a Court would make final orders. Usually, an interim hearing only makes temporary orders that remain in place until further Court orders are made, or the parties reach agreement about how to resolve the matters in dispute.

Other Helpful Tips

If at any time in Court you are overwhelmed, emotional or need some time to compose yourself, you can ask the Court to briefly adjourn the matter, or "stand the matter down". This is generally a short break of 5 – 10 minutes.

If, on the other hand, the Judge asks you a question, and you need to search through your documents to find the answer, it is acceptable to say to the Judge "If you could please give me a moment Your Honour, I just need to find that section of my affidavit". The Judge is generally happy to give you a moment to find the answer. You can also make a request for a moment to gather yourself if you just need a few seconds to think about the question.

If you do not live in the city where the Court is, and you will have difficulty travelling to be at Court in person, you can make a request to appear by telephone or video-link. You should discuss with the Court Registry staff or a solicitor how to make this Application. If you are attending Court in Mackay, sometimes interim hearings are conducted by video link to the Judge in Cairns, even if you are in Court in person. The hearing is conducted in the same way it would be if the Judge was in Mackay, and all usual formalities and respectful behaviour should be observed.

Organisations that can help...

NQ Women's Legal Service
(for women only)
Townsville 07 47725400

Free face to face appointments in Townsville and Cairns, by appointment only.
Free telephone legal advice line 1800 244 504 (operates 9am to 1 pm Tuesday, Wednesday and Thursday). Note Calls are free from landlines only.
Free legal advice sessions are also provided in Ayr, Ingham, Charters Towers, Mareeba, Mossman, Port Douglas, Innisfail, Atherton by appointment only.

Family Relationship Centre (Townsville)
07 4779 4211

Family Relationship Centre (Cairns)
07 4041 6063

Legal Aid Queensland
1300 65 11 88 (for the cost of a local call)

Townsville Community Legal Service (community legal centre)
07 4721 5511

Aboriginal and Torres Strait Islander Legal Service (NQ)
Cairns 07 4046 6400
Townsville 07 4722 5111

Aboriginal and Torres Strait Islander Women's Legal Services (NQ)
07 4721 6007

NQ Domestic Violence Resource Service (Cairns)
07 4033 6100

DV Connect (24 hour telephone support service)
1800 811 811 (free call)

Family Relationship Advice Line 1800 050 321

Relationship Australia Qld
1300 364 277

Family Law Courts
1300 352 000 (coast of a local call)

Cairns Community Legal Service (community legal centre)
07 4031 7688

nq women's legal service

Who we are

We provide free legal help for women who live in North Queensland - from Sarina, north to Cape York and the Torres Strait Islands, and west to Mount Isa.

Our office is based in Townsville and we conduct weekly face to face appointments in Cairns and Townsville. We run legal clinics each month in Ayr, Charters Towers, Ingham, Innisfail, Atherton, Mareeba, Port Douglas and Mossman.

Our free telephone advice line runs 9 am to 1 pm on Tuesday, Wednesday and Thursdays.
Call 1800 244 504

Contact us

Phone 07 4772 5400
Fax 07 4772 5315
Mail PO BOX 2209,
Townsville, QLD 4810

Our Website
www.nqwls.com.au

Would you like a copy of this booklet?
Please contact our office.