

Your first court date...



**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.

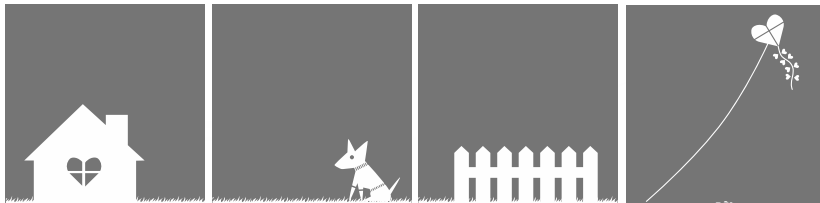
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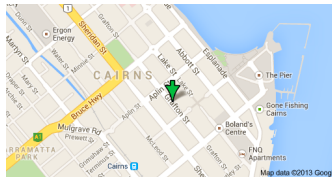


Where are the Courts located?

The Federal Circuit Court and the Family Court share the same Court and staff facilities. The locations of the Courts in North Queensland are as follows:

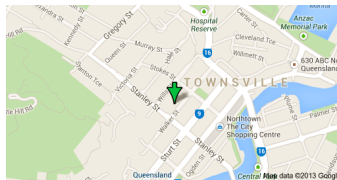
Cairns:

Commonwealth Government Centre
Level 3, 104 Grafton Street
CAIRNS QLD 4870



Townsville:

Commonwealth Centre
Level 2, 143 Walker Street
TOWNSVILLE QLD 4810



Mackay:

Mackay Courthouse
12 Brisbane Street
MACKAY QLD 4740



Some practical matters...

What to Wear

You should ensure you wear clean and ironed clothes that you feel comfortable in. Clothes should not be too casual or have offensive slogans. If you wear a hat or sunglasses to Court, you should remember to remove them before you enter the Courtroom, unless they are worn for medical or religious reasons.

When to arrive at the Court

The time listed for your Court matter is shown in the top right hand corner of your Court documents, and the Court documents filed by the other person. You should arrive at Court at least 15 minutes before the time listed. If you need to file documents, make enquiries or consult the Duty Lawyer (see below), then you should arrive at Court at least half an hour before the time listed.

What to Bring

You may be required to be at Court for most or all of the day, depending on how many other matters are scheduled. You should therefore bring a snack and lunch, or money to purchase lunch, as well as a bottle of water.

You should bring any Court Documents you have received from the other party, copies of any Court Documents you have lodged with the Courts and any other relevant paperwork, such as notes you have prepared for what you want to speak about.

It is usually handy to have a notepad and a pen, so that you can make notes about any agreements that are reached, or orders that are made by the Judge. If orders are made, they are usually not sent to you in writing until some time after the Court date, so you will need to make sure you listen carefully to any orders made, and write them down.

If your Court matter is about a property settlement, you may also wish to bring a calculator, just in case any discussions or negotiations are held, or the Judge asks you for information that needs to be added up.

Some practical matters...

Children

We strongly recommend that you **do not** bring your children to the Court. Children are not allowed within the Courtrooms, and would need to wait in the foyer whilst your matter is heard. There are no child minding facilities in the Court. If you do need to bring a very young infant (for example, because the infant is being breastfed), we suggest you also make arrangements for a friend or relative to attend, and assist to care for the child while you are in the Courtroom.

Available Facilities

At all Courts there are some basic facilities, including toilets, seating, security and appropriate access for people with a physical disability. The public parking close to the Courts is paid parking, and in Townsville and Mackay is quite limited. There is good public transport access. There are shops or cafes within walking distance of all Courts where food and drink can be purchased. There are no Registry facilities in Mackay, which means you cannot file documents with the Court at the Mackay registry. There are no publicly available photocopying facilities at any of the Courts.

If you have safety concerns

Security staff are available at all Courts. If you have safety concerns, you should advise security staff as soon as you arrive about the nature of your concerns and what assistance you may require. Depending on availability, the Court can provide some or all of the following assistance to you to ensure your safety:

- A separate room or area to sit, away from your former partner (not always available);
- Monitoring of your former partner's behaviour;
- An escort to your vehicle after Court has finished (not always available);
- Checking to confirm that your former partner has left the Court precinct when Court has finished, before you leave.

Duty Lawyer

Legal Aid Queensland provide a duty lawyer service at all three Courts on days that people are attending for their first Court date. If you have not been able to obtain legal advice prior to your Court date, or recent events have occurred and you need further legal advice, you should consider accessing the duty lawyer service. Legal Aid Queensland provides the following information about the duty lawyer service:

The service provides basic legal help to people self representing before the Family and Federal Circuit Courts including free legal advice. In special circumstances and subject to demand, the service's lawyers can represent people in court for adjournments, short procedural mentions or they can assist with negotiations about consent orders for children or property matters. The family law duty lawyers cannot take on contested hearings or represent people at a trial.

The Duty Lawyer will make themselves known at the Court, and ask each person whether they require legal advice. If you are not sure who the Duty Lawyer is, or how to access the service, you should ask the Court staff, who will direct you to the Duty Lawyer.

If you are unable to access the Family Law Duty Lawyer you can contact the North Queensland Women's Legal Service by phone on 07 4772 5400.



Registering Your Attendance

When you arrive at the Court, you need to inform the Court staff that you are at the Court and ready to attend your Court matter. Usually, one Court staff member will be checking people's names against a list of all matters due to be heard that day. That staff member will ask you whether you are seeking an adjournment or wanting the matter decided that day (please see heading "Orders that might be made" below).

The staff member may also ask you to estimate how long you think the matter will take to be heard. You should give your best estimate about how long you wish to talk for, and also give an estimate of how long it will take the Judge to read all of the documents that have been filed with the Court, by both you and the other party.

Once you have registered your attendance, it is important that you remain in the Court foyer until your matter is called, or until you are told there will be a break. If you do need to leave, for example to use the bathroom or for a cigarette break, you should inform the Court staff member who is registering attendance, and ask them to confirm that you are not likely to be required within the next few minutes.

Walking into the Court Room

When you walk into the Court room you are required to bow to the Judge if they are in the Court room. If the Judge has not entered the Court room then their appearance will be announced by the Judges associate. You are required to stand when the Judge enters the room and remain standing until the Judges associate requests everyone to sit down.

You are able to sit and watch the matters being heard before the Judge, but you must remain quiet. It is recommended that you spend some time observing the process of Court and watch how solicitors and barristers present their matter.



Callovers

Sometimes, when there are a large number of matters to be dealt with on one day, the Judge will hold what is known as a “callover”. The purpose of a callover is so the Judge can work out which matters need to be allocated the most time to be dealt with, which matters can be adjourned, and which matters have been resolved by the parties reaching an agreement. This allows the Court to then list the matters in an order of priority.

When the callover starts, the Judge will usually ask the parties or legal representatives from every matter to come into the Court room. The Judge (or the Judge’s assistant) will then call the name of each matter on the list, in the order they are listed. You need to listen carefully for when your name is called.

When your matter is called, you approach the bar table, which is the table in front of the Judge and public sitting area, where the solicitors, barristers and self-represented people sit or stand when they address the Judge. You should always address the Judge as “Your Honour”, be polite, respectful and stand when addressing the Judge. You should not approach the Judges bench. You must remain behind the bar table at all times while speaking to the Judge.



You should explain to the Judge, in no more than a few sentences, the reason you are at Court on that day. For example:

Your Honour, I am the Applicant Mother. I am seeking an order that our three children live with me and spend time with the father for five nights and six days in each fortnight. The father and I have reached agreement to equally share the school holidays.

Your Honour, I am the Applicant Wife. I am seeking an order for an equal division of all our property.

Your Honour, I am the Applicant Wife. I am seeking an order for an adjournment today, as I have only received the Husband's response documents this morning, and I need an opportunity to seek legal advice.

Your Honour, I am the Respondent Mother. I am seeking an order for an adjournment today, as I have applied for assistance from Legal Aid Queensland, and I am still waiting for them to make a final decision about whether they are going to assist me.

You should be ready to tell the Court how long you think your matter will take, as you did when you registered your attendance at Court.

The Judge may ask you some questions about your matter, and you should be prepared to answer them, briefly and factually. It is important to listen carefully to the Judge, so you can understand the question that is being asked, and wait until the Judge is finished speaking before you answer.

The other person should also explain to the Court why they are there, and whether they are seeking something different from you. For example, if you are seeking an adjournment, and the other person does not agree, they will tell the Court they don't agree with the matter being adjourned.

You should not go into significant detail about your case, or the evidence you intend to rely on at a callover. You will be given the opportunity to argue your case later, when the Court has determined the order in which it will hear all the matters.

After the callover is completed, the Judge will determine the order in which he or she will hear the cases that day. The Court staff will advise you when your matter will be heard. They may give you a place in order that the matters will be heard in (for example they may tell you that you are third on the list), and if so, you should remain at the Court until your matter is heard. Alternatively, you may be given a “not before” time. This means that you can leave the Court, and come back at the time you are given.

If you are unsure at all about when your matter will be heard and whether you can leave the Court for a break, you should ask the Court staff.

Adjournments

You or the other person involved in the legal matter may wish to seek an adjournment, which is an order that the matter not be decided on the first Court date, but decided on a later date. There are a number of reasons an adjournment may be sought, including:

- That the person has only received the other person's legal documents in the past day or two and has not yet had a chance to properly understand them and be ready to respond;
- That the person needs an opportunity to obtain legal advice;
- That the person has applied for assistance from Legal Aid Queensland, and they are still waiting for Legal Aid's decision;
- That a person has a genuine illness or reason they cannot participate in Court proceedings that day

Sometimes, both people will agree that the matter should be adjourned, and the Court will provide a new date that the matter will be heard.

If both people do not agree that the matter should be adjourned, the person who is seeking the adjournment will have to explain to the Court why their matter should be adjourned. Where possible, the person seeking the adjournment should provide evidence to the Court about the reasons for seeking it, for example:

- A copy of the letter from the other person's solicitor, showing that the Court documents were only sent and received in the last day or two;
- A letter from Legal Aid Queensland, acknowledging receipt of an application;
- A medical certificate

If the Court does not believe the matter should be adjourned, the matter will be decided on that day. If you are seeking an adjournment, and the other person is not agreeing to the adjournment, you should prepare for the possibility that the Court will not grant the adjournment, and that the matter may be dealt with on the first Court date. Please see the heading "Orders that might be made" below for further information about adjournment orders.

Interim Hearings

If the matter is to proceed to an Interim Hearing, please see our booklet “Interim Hearings” for detailed information.

Orders that might be made

The Court may make several different types of orders on the first Court date.

Orders for Adjournment

The Court may order that the matter be adjourned, that is, not decided on the first Court day, but decided on a later day. An order for an adjournment may be worded similar to this:

That the matter be adjourned to 28 April 2013 for Interim Hearing

That the matter be listed for further Interim Hearing on a date to be fixed

Procedural Orders

The Court may make orders that certain things need to be done before a further decision can be made. Procedural orders may include orders similar to the following:

That the father file and serve his Response and Affidavit by 4.00pm on 28 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

Interim Orders

The Court generally does not make final orders on the first Court date. The Court can make interim orders, which are orders about children or property that will remain in place until there is another Court order, or some other agreement between the parties. They are orders to make temporary arrangements while further evidence or information is gathered for the Court to be able to make a final decision. 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



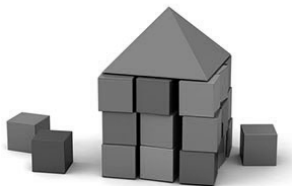
Some examples of interim orders for property might be:

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

That the husband continue to meet all mortgage and interest payments on the mortgage with Bigg Bank, in relation to the property at 87 Main Street, Springfield until further order of the Court



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.



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



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

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

Our Website
www.nqwls.com.au