

# How to change a family law court order

January 2013

## Who should use this fact sheet?

This fact sheet is for people who represented themselves in a final **court hearing** in the Family Court or Federal Magistrates Court (soon to be called the Federal Circuit Court of Australia) and would like to change the **court orders** the court made.

You can:

- **appeal** the decision of the court within 28 days of the date of the original decision, or
- ask the court to vary the decision if there has been a significant change in circumstances since it was made.

## What do these words mean?

Words that are highlighted in **bold** the first time they appear are explained in the Family Law Courts' fact sheet *Legal words used in court*. See the Family Law Courts website.

## Time limits

You have to decide quickly if you want to appeal an order. An appeal must be made within 28 days of the date of the original decision of your hearing.

## How can I get an order changed?

### Is it possible to change a court order?

Not always. How you get orders changed depends on whether both **parties** agree to the change and if you have 'grounds' (reasons why the decision should be changed).

If both parties do not agree to change the orders you may have to appeal.

### What if both parties want to change the orders?

You may be able to change the court orders by:

- filing **consent orders** to change the final orders
- making a **parenting plan** if the orders were parenting orders.

Your new consent orders or parenting plan may replace the court orders. You should get legal advice about writing consent orders or making a parenting plan.

### What if circumstances have changed?

You can ask the court to vary the orders if there has been a significant change in circumstances since the orders were made.

Some of the examples of a significant change in circumstances are where:

- the mental or physical health of one party has changed and it now affects the child's safety
- a child is now old enough to express an opinion about the parenting orders and the child's view is that the orders are not in their best interests and this is obvious from the child's extreme behaviours such as self-harming or running away.

Get legal advice if you want to change the orders because of a significant change in circumstances.

## How can I appeal a decision?

### Can all decisions be appealed?

You can challenge most court decisions by appealing if you can show that there are grounds for appealing. This is not always possible to do. Just because you are unhappy with a decision is not enough.

The purpose of an appeal is to correct a mistake or unfairness. This includes how a judge has used their 'discretion', which is their power to choose between different options for orders or penalties.

A lawyer can help you find out if it is possible to appeal.

### Who will decide my appeal?

All appeals are heard in the Family Court. Depending on where the original decision was made, you may have one or three judges hearing your appeal.

## What happens at an appeal?

### You have to go to a hearing

If you appeal, there will be a hearing to try to settle your differences and to work out the areas of appeal. You need to get permission from the court to change the grounds of appeal after this hearing.

### The judge/s makes a decision

The judge/s can decide to:

- affirm (agree with the court order)
- reverse (change the court order)
- refer the court order back to the original court for a new hearing.

Sometimes there may be cross-appeals, where another party challenges a different part of the original decision.

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## Do I have to follow the order if I decide to appeal?

Once a court makes an order, you must obey it. In most cases, an order can be enforced even though you may be appealing the decision.

You have to follow the orders even if you do not like what the orders say. There may be penalties if you do not obey the orders. If you do not obey, the judge who is hearing your appeal will want you to explain why you did not do what the orders say. This might work against you in your appeal.

If you do not want the order to apply while you appeal, you must apply for a 'stay'. A stay will hold off the order until the appeal is decided.

If you want a stay, you will need to file an application and an **affidavit** that says why you do not want to follow the orders.

## More information

### Family Law Courts

See the court website for publications about court processes, case law, legislation or other legal material

[www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

### Federation of Community Legal Centres

Call to find your nearest community legal centre

Tel: 9652 1500

### Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

## Where to find the law

### Comlaw

The *Family Law Act 1975* and Family Law Rules 2004 are on [www.comlaw.gov.au](http://www.comlaw.gov.au)

### Victoria Legal Aid

#### Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

#### Public law library

The library is open the public. Librarians can help you locate legislation, case law or other legal material

Tel: 9269 0232