

Directions Hearings in the Federal Court and the Federal Circuit Court

Fact Sheet



This fact sheet covers:

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- ✔ Where can you find the Federal Court and the Federal Circuit Court?
 - ✔ Key legal terms
 - ✔ What is a directions hearing or case management hearing?
 - ✔ What will happen at a directions hearing or case management hearing?
 - ✔ How should you prepare for a directions hearing or case management hearing?
 - ✔ Going to court
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Our fact sheet “**Preparing to go to court**” also contains useful information that will assist you in preparing for, and attending, a directions hearing or case management hearing.

1. Where can you find the Federal Court and the Federal Circuit Court?

The Federal Court and the Federal Circuit Court have offices in each state and territory. Addresses and opening hours can be found at the following links:

- Federal Court – <http://www.fedcourt.gov.au/contact>
- Federal Circuit Court – <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/contact-us/locations>

2. Key legal terms

Common terms used in proceedings in the Federal Court and the Federal Circuit Court include:

- **Applicant:** A person who starts the proceeding. There may be more than one applicant depending on the circumstances of the case.
- **Parties:** A party (or side) is a person participating in a legal dispute. A person can include a natural person, a corporation, a business and a partnership.
- **Proceedings:** A legal action, claim or matter.
- **Respondent:** A person responding to the proceeding. There may be more than one respondent depending on the circumstances of the case.

TIP – LEGAL LANGUAGE

If you are feeling overwhelmed by the legal language used in court or in documents and you don't know what certain legal terms mean, the following link provides a glossary of terms:

http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_legalwords.aspx

3. What is a directions hearing or case management hearing?

A **directions hearing** (also known as a case management hearing in the Federal Court) is a short court appearance where the procedural steps to be taken in a proceeding are discussed.

The Judge (or a Registrar) will make orders about what should happen next in the proceeding. For example, at a directions hearing, the Judge or Registrar might order that the applicant file Points of Claim by a certain date and that the respondent file a defence by a certain date after that. The goal of a directions hearing is to identify the real issues in dispute, prepare the matter for a final hearing and make sure the case is resolved quickly and with minimal cost.

The first directions hearing will typically be held several weeks after the applicant has started the proceeding. A proceeding starts when the applicant files their application with the court. If you are the one who files the application, the court registry staff will write the date, time and location of your first directions hearing on the front page your application. If you have filed the application electronically, you should receive notice of the details of the first directions hearing once your

TIP – DO YOU NEED AN INTERPRETER?

If you need an interpreter for a directions hearing, contact the Federal Court or Federal Circuit Court Registry as soon as possible. You can find details for your closest Registry on the websites listed in section 1 of this fact sheet.

If you call the Translating and Interpreting Service on 131 450, you can ask them to set up a call with the Registry to make your request.

application has been accepted by the court. If you are a respondent, you should receive notice of any directions hearing dates when you are served with the application.

It is important that you read this carefully and put the date of the first directions hearing in your diary.

Directions hearings may also occur at other points throughout the proceeding.

4. What will happen at a directions hearing or case management hearing?

4.1 First appearance

The Federal Court and the Federal Circuit Court use different terminology to describe the first court date.

If you are in the **Federal Circuit Court**, your first time appearing in court is referred to as the **first directions hearing**.

If you are in the **Federal Court**, your first time appearing in court is referred to as the **first case management hearing**.

The aims of these hearings include:¹

- identifying the key issues in dispute;
- considering whether alternative dispute resolution is an option;
- considering how evidence should be put forward, such as by affidavit, witness statement or oral evidence;
- agreeing on a date for a further directions hearing; and
- possibly setting a hearing date.

At the first directions hearing, it is likely that, at the very least, the court will make orders in relation to the filing and service of pleadings and mediation.

In relation to the **filing and service of pleadings**, unless it has already been done, it is likely that the court and/or the respondent will require the applicant to file and serve a document, such as Points of Claim or a Statement of Claim, within a particular period of time which sets out precisely what the applicant's claim is and the basis for that claim. The purpose of these documents is to let the court

¹ Central Practice Note: CPN-1, 8.4-8.5

and the respondent understand the applicant's claim. It is unlikely that an applicant will be able to persuade a court not to make such an order. Therefore, before the first directions hearing, you should consider how long you might need to prepare this document to make sure that you ask the court for enough time to prepare it.

In relation to **mediation**, the court is likely to ask the parties what their position is towards mediation at the first directions hearing. Typically, a proceeding is referred to mediation either after the parties have finished serving their pleadings or after the parties have finished serving their pleadings and evidence. The other party may be opposed to mediation.

Before the first directions directions hearing, you should consider:

- what your position towards mediation is;
- whether the proceeding is appropriate for mediation;
- whether you have already tried to resolve your dispute with the other party outside of court; and
- at what stage of the proceeding you think mediation might be most useful.

See section 4.4 of this fact sheet for further information about mediation.

4.2 Orders that can be made

At a directions hearing, the Judge or Registrar will make orders. Each order will be allocated a number. Orders can be made about many things relevant to the proceeding, as long as they are within the court's power. The Judge or Registrar may make orders, even if you do not agree with them.

In addition to the orders discussed at section 4.1 of this fact sheet, the most common orders include orders for:

- the **filing and service of evidence**, that is, the material used to support a party's case in court, which will typically be in the form of witness statements or affidavits. Before the first directions hearing, you should consider what evidence you have to support your claim (including documents and witnesses), what further evidence you might need to obtain and how long you might need to obtain that evidence and prepare a witness statement or affidavit;

- **leave to file and serve pleadings or evidence**, for example, if a party is trying to file and serve a pleading after the time period for it to be filed and served has expired, the court will make an order granting “leave” (permission) for a party to file and serve the document late;
- a date for a **further directions hearing**;
- where applicable, a date to hear **interlocutory disputes** between the parties, for example, a dispute over the scope of a subpoena; and
- a date for the **final hearing**.

TIP – SHORT MINUTES OF ORDER

You do not have to make your submissions orally. Instead, you can provide handwritten ‘short minutes of order’ to the Judge or Registrar explaining how you and the other party want the case to proceed. Remember to print enough copies for all parties to the proceeding. See section 5.1.2 of this factsheet for further information on short minutes of order.

4.3 Non-compliance with an order

Each party to a proceeding has what is known as ‘**liberty to apply**’ to the court. Sometimes the court will include this as the last order made at a directions hearing, while other times the Judge or Registrar will simply say that the parties have liberty to apply but not make a specific order to this effect. Liberty to apply means that either party can ask the court to re-list the proceeding for a directions hearing by giving the other party a short period of notice usually specified in the orders (for example, liberty to apply on 3 days’ notice).

Liberty to apply may be helpful where the other party has failed to comply with a court order or the next directions hearing is not listed for many weeks to come and you wish to have the other party’s non-compliance dealt with by the court.

4.4 Mediation

It is common for the court to make orders for parties to attend mediation and it is unlikely that you will be able to persuade the court not to make such an order. Mediation is a confidential process, with an independent third party present as mediator to assist both parties in reaching a resolution.

Mediation is encouraged by the court and has the following benefits:

- **time:** a dispute can be resolved more quickly through mediation;
- **cost:** mediation will be cheaper than a full trial before a Judge;
- **stress:** mediation helps you preserve your relationship with the other party and allows you to avoid the stresses of a drawn out trial;
- **confidentiality:** mediation is private; and
- **satisfaction:** mediation allows you to have greater control over the outcome of your dispute.

4.5 What should you do if you cannot attend a directions hearing?

If either party has a genuine reason for not attending a directions hearing, they can seek an adjournment to postpone the directions hearing to another date. If you wish to seek an adjournment you should apply as early as possible, and ideally, before the day of the directions hearing.

Applications for an adjournment should be made in writing to either the Registrar or the Judge's Associate. It is a good idea to try to obtain the consent of the other party to the adjournment before you approach the court, or at least copy the other party in on any correspondence with the court about the adjournment. The Judge or Registrar will take this into account when deciding whether the adjournment should be granted and, if so, the time and date of the new directions hearing. If the Judge or Registrar agrees to an adjournment, they may make a costs order (an order for a party to pay the other party's legal costs) against the party who needed the adjournment, although such an order is not necessarily typically made.

If you suddenly cannot attend a directions hearing, you should promptly write to the Registrar or Judge's Associate explaining the reasons why you are unable to attend, copying the other party into the email.

4.5.1 Attending by telephone

The Court may sometimes allow a party to attend a directions hearing by telephone (for example if you live in a remote location). A request to attend by phone should be made as early as possible in writing to either the Registrar or Judge's associate.

Again, it is a good idea to obtain consent of the other party or at least copy them other party in on the request. You should not assume that the Court will allow you to attend by phone.

TIP – ATTEND ALL DIRECTIONS HEARINGS

Ensure you attend all of your directions hearings so that you can keep up to date on the progress of your case. You should not delay the court process. If you do not attend directions hearings, you may run the risk that the court makes an order that you pay the costs the other party incurred by attending the directions hearings and orders may be made in your absence which are not in your best interests.

5. How should you prepare for a directions hearing or case management hearing?

5.1 What to prepare or bring to any appearance

5.1.1 Court documents

You should bring copies of all the court documents you have filed or received from the other parties in the proceeding. You should also bring copies of previous orders made by the court in case you need to look at them as well as any important written correspondence with the other party.

Ensure you bring enough copies for the Judge or Registrar and other parties. Try to arrange your documents in a way that is easy for you to access while you are on your feet.

5.1.2 Short Minutes of Order or Consent Orders

Orders by the court are the court's directions about what the parties are to do or not to do.

Short minutes of order are essentially a 'draft' version of the orders that a party wants the Judge or Registrar to make and are in the form of a numbered list. This makes it easier for the Judge or Registrar and the other parties to know what you want to achieve at the directions hearing. An example short minutes of order in the Federal Circuit Court is **attached** to the end of this fact sheet.

The other party might also send you some short minutes of order to consider before the directions hearing. The Judge or Registrar will expect that the parties (or their lawyers) have made contact before the directions hearing to try and agree on some orders. At least one week before any directions hearing, we recommend that you get in touch with the other party (or their lawyer) to discuss what orders you (and the other party) would like the court to make at the next directions hearing and see if you can agree on those orders.

If the parties are able to agree completely on what orders they want, the parties should prepare an agreed set of short minutes of order called '**consent orders**'.

Ideally, at least one day before the directions hearing, a copy of the consent orders should be emailed to the **Associate** of the Judge or Registrar who will be at the directions hearing. In some cases, the Judge or Registrar may decide to make the consent orders before the directions hearing so that the parties do not need to attend court. This is referred to as a Judge or Registrar making orders '**in chambers**'. The Associate will let the parties know if consent orders have been made in chambers and if the parties no longer need to attend court for the directions hearing. Sometimes, even if a Judge or Registrar makes the consent orders in chambers, he or she may still want to see the parties at the directions hearing, and their Associate will tell you this. If you submit consent orders but do not hear

back from the Associate before the directions hearing, you should still attend the directions hearing, and bring along copies of the proposed consent orders.

While a Judge or Registrar will usually make consent orders, a Judge or Registrar does not **have** to make consent orders. A Judge or Registrar may refuse to make all or some of the orders proposed by the parties. It is therefore very important that you always come to court prepared to explain to the Judge or Registrar why you want the orders you are proposing.

If the parties cannot agree completely on the orders they want made, each party should prepare their own set of short minutes of order to hand to the Judge or Registrar at the directions hearing. In these circumstances, it may be the case that some (but not all) of the proposed orders are agreed between the parties, and if so, you should inform the Judge or Registrar of this at the directions hearing.

Make sure you bring enough copies of the consent orders or short minutes of order to court for both the Judge or Registrar and the other parties.



TIP – CONTACTING THE JUDGE'S ASSOCIATE

You may be able to find out which Judge or Registrar will be at your directions hearing by looking at the court list on the Federal Court or the Federal Circuit Court Website (see section 6.1 of this fact sheet) or by checking [Federal Law Search](#).

The Judge's Associate is your main point of contact if you need to bring something to the Judge's attention. You can find a list of contact details for Judge's Associates in the Federal Circuit Court and Federal Court webpages. All parties should be copied into any email you send to the Judge's Associate.

A list of Judge's Associates for the Federal Circuit Court can be found here: www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/judges-senior-staff/judges.

You can contact a Judge's Associate in the Federal Court via the following emails found in this link: <http://www.fedcourt.gov.au/contact/judges-chambers>.

Tips for preparing

Every time you attend a directions hearing, you should be prepared to answer questions from the Judge or Registrar about what you want achieved from the directions hearing (including the reasons why you are asking the court to make certain orders), what your claim (or defence) is about and what has happened in the case so far.

Here are some questions for you to consider before your appearance. It may be useful to write down some notes to bring with you and use:

- What is the matter about?

- If you are an applicant, can you provide a brief summary of what your claim is about?
- If you are a respondent, can you provide a brief description of what your defence is?
- If it is not your first directions hearing or case management hearing, what happened last time you were in court?
- Have you complied with all orders to date? If not, why not?
- Has the other side complied with all orders to date?
- Have you discussed what orders you want made with the other parties?
- Are you and the other parties in agreement about any of the proposed orders?
- If you disagree with orders proposed by another party, why?
- What is your position towards mediation and when do you think mediation would be most useful (for example, after evidence is served)?

6. Going to court

6.1 Where do you go?

Directions hearings are held in a courtroom at either the Federal Court or the Federal Circuit Court.

The application that either you have filed (if you are the applicant) or received (if you are the respondent) will list details of the date, time and location of the first directions hearing. After the first directions hearing, the court will make an order about the date and time of the next directions hearing. After approximately 4:30pm on the day before a directions hearing, you can also check the Federal Court or the Federal Circuit Court website for daily listings of all hearings (see the note directly to the right of this paragraph).

You should always try and get to court as early as possible and be at the courtroom at least half an hour before the directions hearing is scheduled to start. This may also give you an opportunity to speak with the other parties if you wish.

When the courtroom opens you should go and speak to the Judge's Associate (or another court officer at the front of the room) and tell them your name and your matter so that they



NOTE

You can access the daily court list for the Federal Court here:

<http://www.fedcourt.gov.au/court-calendar/daily-court-lists>

You can access the daily court list for the Federal Circuit Court here:

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/court-lists-and-circuits/daily-court-lists>

can note you are present. You may be directed to write your name on a piece of paper. Take a seat and wait until the name of your matter is called out.

6.2 Tips for appearing in court



If you would like to take a support person with you to court, you can, as long as they are over 18. This may be helpful if you are feeling anxious.

When your case is called, you can go and sit at the bar table to address the court. This is usually the table closest to the front of the courtroom. An applicant will normally sit on the left-hand side of the bar table, and a respondent will sit on the right-hand side.

Remember to always call the Judge 'Your Honour' and the Registrar, 'Registrar' and to stand up when you are speaking to them. You should sit down when the other party or the other party's lawyer is speaking.

Courtrooms can be intimidating places if you have never been in court before. Keep the following things in mind for your directions hearing or case management hearing:

- perform a quick bow to the Judge or Registrar, when you enter or exit the courtroom;
- turn off your phone before entering the courtroom;
- do not bring food and /or drinks into the courtroom;
- bring a notepad and pen into the court and take notes;
- clearly mark your documents. If the Judge or Registrar requests a document, you will want to be able to find it easily and quickly;
- dress neatly. You do not need to wear business attire, but you should not wear singlets, thongs or untidy, revealing or ripped clothing. For example, a collared shirt and pants or skirt would be appropriate;
- listen for announcements from the court staff to sit or stand; and
- write down any orders the Judge or Registrar makes and ask them to repeat anything you may have missed. You will be able to find and download any orders that the court makes by accessing the court file on the Federal Law Search here:

<https://www.comcourts.gov.au/public/eseach>



NOTE

If you have any special needs or disabilities that the court should be aware of, let the court's Registry know at least a week before the hearing so that court staff can accommodate for your needs.

Contact details for the Registries are set out in section 1 of this fact sheet.

ANNEXURE A

IN THE FEDERAL CIRCUIT COURT OF AUSTRALIA

AT SYDNEY

FILE NO: 123/2016

John Khan

Applicant

**COMPANY PTY LTD
ACN 111 222 333**

Respondent

ORDER

BEFORE: Justice Musgrave

DATE: 7 March 2017

MADE AT: Sydney

UPON APPLICATION MADE TO THE COURT, MR KHAN appearing for the APPLICANT and MS GREY appearing for the RESPONDENT

THE COURT ORDERS THAT:

- 1. The parties participate in a mediation to be conducted by a Registrar of the Court by no later than 25 April 2017.**
- 2. The matter be listed for directions at 10:30 am on 28 June 2017.**
- 3. Liberty to apply on three days' notice.**

Resources

Related Resources

- ✔ Law Access has a Federal Circuit Court Directions Hearings fact sheet for employment law matters, which can be accessed here: www.lawaccess.nsw.gov.au/Pages/representing/lawassist_employmentrights/lawassist_gp_gp/lawassist_goingtofmc_gp/lawassist_directions_gp.aspx
- ✔ The Federal Circuit Court has a fact sheet on your first time appearing in court, which can be accessed here: www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/corporate-publications/fs-first-court-event
- ✔ The Federal Circuit Court has general tips for your court hearing, which can be accessed here: www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/family-law-matters/about-going-to-court-and-court-procedures/tips-for-your-court-hearing/ (a video tour is also available here: www.youtube.com/watch?v=ZHmQBLgr70)
- ✔ This fact sheet has not specifically addressed self-representation in the Family Law Courts. If you are a self-represented litigant appearing in the Family Law Court, you may wish to consult this fact sheet: <http://www.dvnsdsm.org.au/2017/wp-content/uploads/2017/07/Web015-Self-representation-factsheet.pdf>

Legislation

- ✔ *Federal Court of Australia Act 1976* (Cth)
- ✔ *Federal Circuit Court of Australia Act 1999* (Cth)
- ✔ *Federal Court Rules 2011* (Cth), Part 10
- ✔ *Federal Circuit Court Rules 2001* (Cth), Part 6

Practice Note

- ✔ Central Practice Note: National Court Framework and Case Management (CPN-1)

