

Jurisdiction of the Family Court of Western Australia

The Family Court of Western Australia (FCWA) is the only state Family Court in Australia, established under the *Family Court Act 1975* (WA; now repealed,) and continued by the *Family Court Act 1997* (WA) (FCA).

The FCWA and the Magistrates Court of Western Australia exercise federal jurisdiction under the *Family Law Act 1975* (Cth) in relation to matrimonial causes where there is a nexus to Western Australia ([s35 FCA](#), [s38 FCA](#)) between married parties, or unmarried parents of a child located outside Western Australia.

The FCWA's non -federal jurisdiction ([s36 FCA](#)) includes making parenting orders in respect of children of unmarried parents, and determination of financial disputes between unmarried parties when the threshold tests of jurisdiction are satisfied ([s205X FCA](#)). The principles the court must apply in the exercise of its non-federal jurisdiction mirror the principles set out in s43 of the *Family Law Act 1975* (Cth) ([s37 FCA](#)). Appeals in the non-federal jurisdiction lie to the Supreme Court of Western Australia. See [CDW v LVE \[2015\] WASCA 247](#) for discussion on the appeal process for interlocutory decisions.

Western Australian Family Law Magistrates are “specialist” magistrates co-located with the FCWA. In practice, federal and non-federal jurisdiction is exercised by Judges and Registrars of the FCWA and Family Law Magistrates throughout the state. Western Australian Magistrates not appointed Family Law Magistrates are unable to exercise family law jurisdiction in the Perth metropolitan region. Outside that region the family law jurisdiction is exercised by non-Family Law Magistrates initially, and defended cases are then transferred to a circuit of the FCWA (usually conducted by a Family Law Magistrate).

Although Family Law Magistrates have power to make restraining orders under the *Restraining Orders Act 1997* (WA) as “specialist” family law magistrates, they are not resourced to do so. The *Restraining Orders Act 1997* (WA) empowers a court exercising family law jurisdiction to make a restraining order ([s63\(2\)](#)) subject to a number of conditions, including that the person against whom the order is sought must be present when the order is made and has been given the opportunity to be heard ([s63\(4\)\(c\)](#)).

[The Family Court of Western Australia's case management guidelines](#) provide that applications seeking parenting orders (regardless of whether other relief is sought) are allocated to a first return date in a child-related proceedings list, conducted by a Family Law Magistrate and allocated to the Magistrate's Track. The Family Law Magistrate is assisted by a family consultant in the child-related proceedings list, the family consultant having read the files and made enquiries regarding police information and DCPFS (*Department for Child Protection and Family Support*) information regarding the parties and the children. This information is reported to the Family Law Magistrate in open court in the presence of the parties. The family consultant may also suggest appropriate therapeutic services to which the parties may be ordered or referred. Proceedings are managed by the same Family Law Magistrate unless and until the proceedings are allocated to either the Standard Track (matters in which the trial is likely to exceed two days, or the monetary limit exceeds the ceiling of magistrates' jurisdiction in financial matters) or the Complex track (matters involving, for example, interstate or international relocation; complicated issues of fact, law or evidentiary material; or international issues such as jurisdiction).