

# Alert

## FAMILY LAW



## COVID-19: Family Law and the Courts

By Joanne Cliff

Both the Family Court and the Federal Circuit Court of Australia are adapting to the restrictions required to combat the COVID-19 pandemic. The Courts are still open and operating; however, the way hearings and other matters are handled have changed as follows:

### Hearings

- Almost all hearings are being heard either via video conferencing or by telephone between the Judge and Lawyers. You do not need to attend Court.
- If in a rare case you do need to attend Court perhaps for a children's matter, then processes relating to social distancing have been put in place.

### Trials

- Trials that were listed for hearing in the next few months have now been vacated. Towards the end of July, the Court will review the position with COVID19 and the Trial list.

### Conferences and mediations

- These are also being conducted either via video conferencing or telephone.
- If you have a date for a session with a family consultant, you should be contacted by that consultant to attend the conference by telephone.
- If the appointment is not within the Court building, then you will need to contact the Family

Consultant directly and discuss how they wish the assessment to proceed.

### Divorce hearings

- Where you are required to attend the Court for a divorce hearing in normal circumstances (if children are involved), these hearings can now be done by telephone without the need for you to attend Court.
- Joint Applications filed with the Court will be reviewed by Registrars and orders will be made without the necessity of attending Court.

### Court documents

- All Court documents can now be signed by your lawyer and then filed electronically with the Court.
- There is no need for you to sign any documents.
- Applications for Consent Orders can still be lodged by way of e-application and Orders will be made by Registrar in the normal way.

### Children's matters

- The Court has made an announcement stating that any Court Orders involving children are to be followed by parents. The best interests of the child are still paramount. If you choose not to send a child to the other parent in line with the Court Order, then you will need to establish that you had a "reasonable excuse" to withhold the child.

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- It would be prudent to obtain a medical certificate if the child is sick.
- The Court expects parents to negotiate a set of sensible alternatives for if for example, a hand over venue is closed, such as a school.
- There will only be restricted circumstances where deviation from Court Orders could provide a reasonable excuse such as if one parent has COVID-19 or the child has the virus or is otherwise ill or if there are other genuine safety issues. A parent is not to use the restrictions due to COVID-19 to obtain an advantage over the other parent.
- If parents can negotiate a variation to the Orders, the new arrangement should be noted in writing. Any variation should be in line with the spirit of the Orders. Overall, at all times, parents and carer's have to act reasonably.
- If children have to travel interstate (e.g. during school holidays) to spend time with the other parent, it is expected that States and Territories who have applied border restrictions will allow an exemption to comply with Court Orders.
- If one parent does not act reasonably and withholds a child from the other parent, then applications can still be made to the Court for contravention or to recover the child if the child is withheld and not returned to the parent with whom they live.

If you would like to discuss how any of the above changes will impact on the progress of your matter, please contact our Family Law expert Joanne Cliff.



**MORE INFO**

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