

COVID-19 and Family Law

Answering Your Questions

4 April 2020

Ward Keller's Family Law partner, [Tessa Czulowski](#), joined [Leon Loganathan](#) and Peter Gowers on their [Territory Story podcast](#) this week to facilitate a Q & A session to answer your questions about how Family Law has been affected by COVID-19. We hope that the following Q & A answers any queries and concerns you may have.

General Questions

1. What should people who have current family law proceedings on foot in court do? Where do they stand right now? What's happening with the courts and are family law matters still being processed?

Most family law matters are proceeding but matters will be conducted via telephone or Audio Visual Link (AVL). The court is hearing some urgent matters in-person where there are certain circumstances which mean it cannot proceed by electronic means, but for the most part, things are being done remotely.

Non-urgent matters, including hearings, may be adjourned, and it could be some time before you get a new date. People need to be patient. The court is in the process of calling matters on to assess whether a matter is urgent, and whether it can be conducted via telephone or AVL.

Registries are still open, but people need to telephone in beforehand and undertake an assessment to determine if they're allowed to actually attend in the registry. For people who are familiar with the Family Law system, they would know that most documents are filed online through the Commonwealth Courts Portal, and that is operating as usual. Parties can file new applications or upload new documents on their existing application through the Portal.

Family reports and other child dispute services are being conducted by telephone where possible and are otherwise being assessed on a case by case basis.

The most up to date information for the [Family Law Courts](#) can be found here:
<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-news-hp>

A parenting Q&A can also be found here:
<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-faq/parenting-faq>

2. What about domestic violence applications?

Domestic violence applications can still be made. In the Northern Territory (NT), the [Local Court](#) is still sitting as usual, although appearances are by telephone.

If people have safety concerns or want to make a domestic violence order (DVO) application, they should contact their local domestic violence service, or their local Legal Aid Commission.

[NT Legal Aid Commission](#) can be contacted on 1800 019 343.

If people have immediate safety concerns, they should contact the Police. [NT Police](#) can be called on 131 444.

Parenting Orders

3. What about people who have parenting Orders in place that require a child to travel (e.g. interstate for school holidays)? What should they do?

Parents are being encouraged to negotiate and discuss matters with the other parent to try and reach an agreement about whether school holiday time is going to occur or not. If it is not, parents can agree to 'make-up time' once COVID-19 has passed.

Given the travel advice around COVID-19, many states and territories have enacted border closures and require people to self-isolate. As a result, it is likely not going to be practical for children to travel because these border closures and mandatory self-isolation periods are probably going to be longer than the school holidays themselves. Some states and territories are working to provide exemptions to the mandatory self-isolation periods for children who are travelling under family law Orders. If an exemption applies to your circumstances, you should make sure you have a copy of the court Order to show authorities at the border.

If an exemption does not apply, it is possible that the court would consider this a 'reasonable excuse' for a parent not to comply with an Order to send a child interstate or overseas for school holiday time. A defence to a breach of a parenting Order is if a parent has a reasonable excuse.

Each matter is different, so if parents cannot reach an agreement, they should obtain legal advice about their specific situation, and about whether there is a reasonable excuse for not complying with parenting Orders.

4. What about parenting Orders or a parenting plan that requires handover to occur at a child's day care school etc., but it is closed. What should happen in these circumstances?

Parents should try and negotiate an alternate handover location. This can be difficult if there is conflict or if the co-parenting relationship is not very good, but the courts have released a directive that parents should try to negotiate wherever possible.

Parents should consider an alternate handover location such as a park or outside a shopping centre, where you can practise social distancing. If parents are concerned about their safety at handover, they can contact a changeover facility such as [CatholicCare](#) or [CentreCare](#). Currently these centres are operating normally, although there may come a time when they temporarily stop operating.

5. What if a parent or child is required to self-isolate? Who should look after the children then?

If the primary or caring parent is required to self-isolate, then under the Government Guidelines, they are supposed to limit their contact with anyone in the household who is not also self-isolating. This would include children, although this is obviously difficult. Where possible, a parent who is required to self-isolate should discuss with the other parent to see if they are able to care for the child/ren.

If a child is required to self-isolate then this would prevent them moving between households until the self-isolation period ends.

6. What about if there is a person in an 'at risk' category in one household? Can a parent decide not to send the child to the other parent's household? For example, where there are grandparents or even a health care worker?

There's no easy answer to this question. Again, try and discuss this with the other parent. If you are not able to reach an agreement, I would suggest getting some medical evidence, such as a doctor's report; setting out the risk factors and recommendations that a particular family member should limiting contact with other people.

The court has directed that parents should be giving effect to Orders or an agreement as much as possible, or at the very least, giving effect to the spirit of the Orders/agreement.

It would seem that the onus would be on the grandparent/health care worker etc to limit their interaction with the children rather than preventing the children moving between households or limiting time with the other parent.

It is important to remember that the Family Law Act says that children have a right to have a meaningful relationship with both parents, so that needs to be balanced against a potential risk to somebody else in the family or within the household. If you have specific concerns, you should obtain legal advice about your individual circumstances.

7. If parents agree to alter the parenting arrangements during this time, should they be documenting that? What is sufficient to document the changes?

Parents should be documenting changes, even if it is just in the form of text messages, WhatsApp messages or an email. It is important that both parents understand what the changes to that parenting arrangement are, and if text messages clearly set that out, then that is sufficient.

If parents are thinking more long term – especially as the federal government has indicated that these social distancing measures may be in place for six months or more - so they want something more formal in place, then they might want to consider having an updated parenting plan prepared or even a set of updated consent orders.

The Chief Justice of the Family Law Courts has reminded parents that consent orders are easy to obtain. It is a relatively low-cost process. If parenting arrangements are going to be varied for three to six months, having something more formal such as a parenting plan or consent orders would be recommended. But if it's just short-term change to handover location or something minor, text messages or emails should be sufficient.

8. What if parents have special contact arrangements, such as at a contact centre or in a public location that is now closed?

If contact centres are closed, it may not be possible to replicate supervised time in another environment.

If no alternate location or solution can be found, or parents cannot agree, then they should obtain independent legal advice specific to their situation. It may be necessary to make an urgent application to the court to determine what alternatives can be put in place.

9. What if one parent is working from home and wants to have more time?

This will become particularly relevant as more parents work from home, and as schools move to remote learning. Again, parents should try and agree to alternate arrangements where they can, be prepared to

work together and be flexible. Where one parent can work from home and facilitate remote learning, even if it is outside of their usual time, parents should be prepared to be flexible. Parents need to keep the best interests of the child/ren at the forefront of their minds.

If an agreement cannot be reached, then it might be necessary to obtain legal advice or consider contacting a [Family Dispute Resolution Provider \(mediator\)](#). Mediation can be conducted in a remote manner, such as by Zoom, Skype and telephone. Parents should make enquiries and see if they are able to arrange mediation as soon as possible.

10. If a child misses out on time with one parent, will they get make up time?

It is a reasonable expectation that make up time will be provided.

11. What should separated parents do if they are both working and the daycare/school is closed? Who should look after the children?

This is particularly difficult for parents who usually rely on grandparents or other people who are now at higher risk of COVID-19. Parents should try to negotiate and consider whether flexible working hours are available, or alternate carers such as babysitters can be arranged, with parents to split the costs.

12. What should a parent do if they pay child support and have lost their job?

Parents should log onto their MyGov account or contact [Services Australia \(Child Support\)](#) (formerly the Department of Human Services) to update their income. You should advise of the change to your employment circumstances or income circumstances. This applies to both 'payer' and 'payee' parents.

Remember that [Services Australia](#) is also responsible for [Centrelink](#), so parents will need to be patient as they are currently receiving an overwhelming volume of calls.

Property Matters

13. What happens if people have reached an agreement about their property matters, but now their financial circumstances have changed (e.g. someone has lost their job)?

This could occur where people had an agreement e.g. one person was going to refinance the mortgage and pay the other person out, and they've now been stood down and no longer have an income. That obviously changes their ability to refinance the mortgage.

If there's already a formal agreement in place - for example, Consent Orders which have been lodged with the courts or a Binding Financial Agreement, then parties need to consider having that amended to reflect the change in circumstances. That could be extending the time period for that refinance so that instead of it taking place in 28 days or 42 days; that will take place over a longer period of time.

If the conditions cannot be complied with or the timeframe cannot be extended, it may be necessary to apply to the court to have those orders reopened. Parties should seek legal advice as it will depend on your specific circumstances.

If there is a change in circumstances and orders have not yet been made, parties should return to negotiations with the other person, or through solicitors to let them know of the change in your circumstances.

There will be a lot of people who find themselves in this situation; not just with refinancing or selling property, but also changes to superannuation and shares. For many people this may require revisiting an agreement.

It may mean putting negotiations on hold until COVID-19 passes or accepting that the property pool is smaller than it was two months ago.

14. If the Court is not listing property matters that are not urgent, what other options are available for people?

There are other options: mediators and arbitrators are prepared to do private property mediation through AVL or telephone link. Matters can still be progressed, and if matters are resolved, it can be formalised.

It is important to note that the court has been very clear that, with the exception of urgent property matters, the remainder are going to be on hold to allow the court to deal with urgent parenting matters.

If you are in a position to progress your property matter and do not want to put it on hold, we recommend mediation or arbitration as an alternative.

Ward Keller offer initial Family Law consultations for \$110 inclusive of GST. Currently we are conducting all of our initial consultations via telephone. You can contact us on 08 8946 2982 or at www.wardkeller.com.au

Disclaimer: The advice provided in this article is of a general nature only and should not be substituted for obtaining your own independent legal advice. If you have any further queries, please contact Ward Keller on (08) 8946 2999 or wardkeller@wardkeller.com.au for further advice.

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