

STATEMENT FROM THE CHIEF JUSTICE OF THE FAMILY COURT OF AUSTRALIA – PARENTING ORDERS

14 April 2020

The Family Court of Australia and the Federal Circuit Court of Australia are acutely aware that the current pandemic is having an enormous impact on families and the Australian community.

Parents are naturally deeply concerned about the safety of their children and how the COVID-19 virus will affect their lives. Part of that concern in family law proceedings can extend to a parent's or carer's ability to comply with parenting orders and what should be properly expected of them by the Courts in these unprecedented times.

The purpose of this statement is to clarify that the Courts remain open to assist parties, and to provide parents with some general guidance. However, it is understood that every family's circumstances are different.

1. It is imperative that parents and carers act in the best interests of their children. This includes ensuring their children's safety and wellbeing. Whilst the Courts make orders that are determined to be in the best interests of a child, caring for and determining the practical day-to-day best interests of a child is primarily the responsibility of parents and carers.
2. Consistent with their responsibilities to act in the children's best interests, parents and carers are expected to comply with Court orders in relation to parenting arrangements. This includes facilitating time being spent by the children with each parent or carer pursuant to parenting orders.
3. In the highly unusual circumstances now faced by Australian parents and carers, there may be situations that arise that make strict compliance with court orders very difficult, if not, impossible. This may be caused, for instance, where orders stipulate that contact with a parent occurs at a designated contact centre, which may not currently be operating. Or, the "pick up" arrangements of a child may nominate a particular school, and that school is now closed. Many state borders are also closed. In addition, there may be genuine safety issues that have arisen whereby one parent, or someone in close contact with that parent, has been exposed to COVID-19, and this may restrict the safe movement of a child from one house to another.
4. As a first step, and only if it is safe to do so, parties should communicate with each other about their ability to comply with current orders and they should attempt to find a practical solution to these difficulties. These should be considered **sensibly** and **reasonably**. Each parent should always consider the safety and best interests of the child, but also appreciate the concerns of the other parent when attempting to reach new or revised arrangements. This includes understanding that family members are important to children and the risk of infection to vulnerable members of the child's family and household should also be considered.
5. If an agreement can be reached about new parenting arrangements, even if they are to be adjusted for a short period of time, this agreement should ideally be in writing, even if by way of email, text message or WhatsApp between each other. This will be particularly important if there are later family law hearings and will assist all concerned, including the Court, to understand what agreement may have been reached.
6. If you feel that you need further guidance, the Family Relationships Advice Line can provide information, advice and telephone-based

Family Dispute Resolution services to assist parents and carers to discuss any issues that arise and help them come to an agreement. The Family Relationships Advice Line can be contacted on 1800 050 321 or visit the website [here](#).

7. Parents and carers can also mediate their differences through lawyers. Electronic mediation services are available from the Courts and through local Bar Associations and Law Societies during these restricted times. Visit their websites for more information.
8. If an agreement has been reached and consent orders have been developed to outline new or varied parenting orders, consent order applications can be filed electronically with the Court. This process is quick and usually conducted without a hearing.
9. If the parties are unable to agree to vary the arrangement, or if it is unsafe to do so, and one or both parents continue to have real concerns, the parties are at liberty to approach the Court electronically and seek a variation of the orders.
10. Where there is no agreement parents should keep the children safe until the dispute can be resolved. Also during this period of dispute, parents should ensure that each parent or carer continues to have some contact with the children consistent with the parenting arrangements such as by videoconferencing, social media, or if that is not possible, by telephone.
11. At all times, parents or carers must act reasonably. To act reasonably, or to have a reasonable excuse for not complying with Court orders, is a matter that is considered by the Court (pursuant to s70NAE of the *Family Law Act 1975* (Cth)).
12. It is imperative that, even if the orders cannot be strictly adhered to and are varied by the parties, the parties ensure that the purpose or spirit of the orders are respected when considering altering arrangements, and that they act in the best interest of the children.
13. The Courts appreciate that agreement by mutual consent may not be reached, particularly if one party has concern for their physical safety. Therefore, the Courts advise that if you or your child is in immediate danger, please contact your local police.
14. The perpetration or threat of family violence is never in the best interests of the child. Therefore, the Courts advise that if you or your child is in immediate danger, please contact your local police and seek medical advice if required.

In the meantime, the community should be assured that the Courts will continue to perform their duties during this time of crisis. Whilst changes to the Courts' operations have been implemented in accordance with the necessary restrictions placed on our community by the Commonwealth Government, the Courts remain open to assist Australian families in these challenging times.

Judges, Registrars and staff are committed to providing access to justice when called upon to do so. This includes conducting hearings both via videoconferencing through the use of Microsoft Teams or other platforms, or by telephone. The Courts are also conducting mediations electronically and through other safe means.

There will be, in exceptional circumstances, a small number of face-to-face in-court hearings. For the safety of all concerned, these will only be granted when absolutely necessary. Those hearings will be conducted in strict accordance with the [Face-to-Face in-Court Protocol](#) issued by the Courts. As in any other interaction, social distancing requirements will be strictly be followed. Similarly, face to face interviews by family consultants will only take place in exceptional circumstances.

The Registries are still open for telephone appointments, electronic filing and the listing of urgent cases. Family Consultants will also continue their vital work through these electronic mediums as best they can.

Family Dispute Resolution

The law requires separating families who have a dispute about children to make a genuine effort to try to sort it out through family dispute resolution (FDR) before filing an application for parenting orders in court.

This requirement applies to anyone wanting to file an application with a family law court. It also includes those seeking changes to an existing parenting order. There are a few exceptions to this requirement, such as cases involving family violence, child abuse or urgency.

Unless an exemption applies, parties seeking to have a parenting matter determined by a family law court will need to electronically file a certificate from an accredited FDR practitioner. The certificate is issued under Section 60I of the *Family Law Act 1975* and is commonly known as a Section 60I Certificate.

You can visit [Family Relationships Online](#) for more information about the services and advice available for families, including seeking services from an FDR practitioner.

An FDR practitioner is an independent person who can help people discuss issues, look at options and work out how best to reach agreement in disputes about children. You can search for an accredited FDR practitioner who has consented to be on the [Family Dispute Resolution Register](#) website.

For general information about parenting orders, the following pages may be visited:

- [Complying with orders about children;](#)
- [Parenting orders – obligations, consequences and who can help;](#)
- [How do I apply to the court when parenting orders have been breached or not complied with?](#)

More information on these measures are available from the Courts' websites:

<http://www.federalcircuitcourt.gov.au>
<http://www.familycourt.gov.au>

More information about how to self-assess for your personal risk for coronavirus (COVID-19) is available from the website of the [Commonwealth Government](#).

Source: Statement from the Chief Justice of the Family Court of Australia – Parenting Orders, MARCH 2020