

Russell Kennedy Family Law Webinar:  
Things to know about Christmas, School holidays and  
Travel

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9 December 2021

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## Webinar housekeeping

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- All attendees will be on mute and their cameras turned off for the entire webinar
- We have BD tech support live to assist with any technical issues
- Use the chat function for any comments/technical issues
- Use the Q&A function for specific questions related to the webinar content – Questions will be addressed at the end of the webinar
- There will be a post webinar survey link sent at the end of the webinar. We value attendee feedback
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback

## Disclaimer

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The information contained in this presentation is intended as **general commentary only** and should not be regarded as legal advice.

Should you require specific advice on the topics or areas discussed, please contact the presenters directly.

# Introduction



# Family law team

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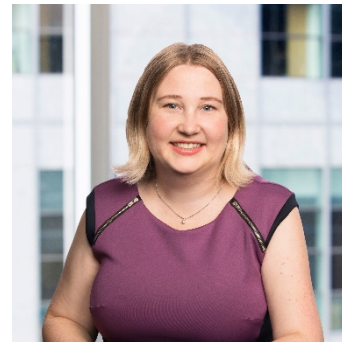
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# What we will cover today

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## ***TIPS FOR THE HOLIDAY PERIOD***

1. School holiday time;
2. Special occasions including Christmas, New Years Eve and Australia Day;
3. Travel arrangements – both locally and internationally;
4. Passports for children;
5. How COVID-19 might affect travel arrangements; and
6. What options are available if parties cannot reach agreement?



**HOLIDAY TIME**





# HOLIDAY TIME CONSIDERATIONS

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- When do the children actually finish school / when do the school holidays start and finish?
- Do either or both parents have work commitments that would affect the care arrangements for the children during the school holidays?
- Who does the child/children normally live with most of the time?
- Where will the changeovers be if not at your respective homes?

# OPTIONS

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- Some parents keep consistency with the existing arrangements during the holidays.
- Some parents agree to week on week off with a changeover in the middle.
- Some parents agree to the first half of the Christmas holidays with one parent and the second half with the other parent (approximately 3 weeks each).

***TIP: Consider what is suitable for your family's individual needs. Don't worry about what other people are doing or what you think is "fair".***

**SPECIAL OCCASIONS**



## Special occasions that fall during the school holidays

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- Christmas Eve / Christmas Day / Boxing Day
- New Years Eve / New Years Day
- Australia Day

***Consider: How might these days be spent with each parent? Are there any special traditions for either parent/the children?***

## CONSIDERATIONS AND OPTIONS

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- Will there be travel (locally) involved from household to household on these special occasions?
- Would the children be upset if they didn't see both parents on these special occasions?
- Could you share the days and alternate them each year?

# TRAVEL ARRANGEMENTS



# Travel Arrangements

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- Where there are no Federal Circuit and Family Court Orders in place, there is nothing which would prevent one parent from travelling with the child/children.
- Where there are proceedings on foot or there are Orders, then consent from both parties is required to take the child/children overseas.

# What to do if you want to travel overseas and have no Orders?

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Write to the non-travelling parent to seek their consent and provide them with the following:

- Dates you propose to travel with the children;
- Details of where the children are travelling to and where you propose to stay with the children;
- Details of how the children will communicate with the non-travelling parent while they are travelling and how often;
- Details of proposed “make up time” with the non-travelling parent upon return.
- It may also be of assistance to include why you propose to travel with the children.

***If an agreement cannot be reached, seek legal advice.***



**PASSPORTS AND OTHER  
PRACTICAL CONSIDERATIONS  
FOR TRAVEL ARRANGEMENTS**



## Passports And Other Practical Considerations For Travel Arrangements

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- Does the child/do the children have valid passports in place and who holds them?
- What happens if my partner does not consent to issuing a passport for the children or releasing the passport for the children to me to enable them to travel?

# **HOLIDAY ISSUES: COVID-19 AND VACCINATIONS**



# Travel and COVID-19

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*“Despite the existence of the COVID-19 pandemic, it is important that all reasonable efforts are made for children to spend time with both parents consistent with taking a responsible approach in respect to mitigating against risks associated with the presence of the COVID-19 virus in the community and, specifically, the child coming into close contact with a carrier of the virus.”*

- What are the risks to the children if they travel?
- Are parents located in a different State or country?
- Is there a Parenting Plan or Orders providing for the children to spend time with the other parent over the holidays who lives there?
- COVID – 19 List still available to parents where Court is necessary.



# Vaccinations

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- What are the current medical recommendations in your State and by your child's medical practitioner?
- What are the vaccination requirements/rates in the proposed State / Country for travel?
- What can you do if the other parent does not agree to vaccinate?

**Options Available**



## What options are available if you cannot reach agreement?

- Mediation for parenting matters is compulsory. It should be the first step (save for cases of urgency, risk or family violence) and if no luck after further negotiations, parents can file an application with the Court setting out the holiday time, travel arrangements and passport Orders they are seeking.
- Parties may wish to formalise the travel arrangements that have been agreed to in Orders as agreed or as set out in a Parenting Plan after Mediation
- Is counselling or family therapy an option? Is there enough time to negotiate before the holiday?
- The National **COVID-19 COURT LIST** is still available if the travel matter relates to COVID-19 or vaccinations.

*Ultimately, these are all complex issues and parties should always seek legal advice for their specific circumstances.*

## COVID-19 LIST

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The following are examples of applications that may be considered suitable, subject to the specifics of each case, for consideration in the National COVID-19 List:

**a. Family violence:** There has been an escalation or increase in risk due to family violence associated with the COVID-19 pandemic.

**b. Suspension of parenting orders due to a family violence order:** where either parenting orders or a parenting plan have been suspended by a family violence order made during the COVID-19 pandemic and a party seeks that the Court make further parenting orders.

**c. Vaccinations:** there is a dispute about a child being vaccinated against COVID-19.

**d. Medical:** The parties cannot fulfil the parenting obligations due to a party and/or child testing positive for COVID-19 or medical complications from having contracted COVID-19, or due to concerns about infection or quarantine requirements.

**e. Travel arrangements or border restrictions:** the parties live in different States or Territories and there are difficulties or anticipated difficulties with the child travelling between the parties' residences, including due to any Government restrictions, or a party is planning international travel.



## COVID-19 LIST

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**f. Supervised contact:** the current parenting arrangements involve supervised contact, and the contact centre is closed or the supervisor is unable to perform their role, and the parties cannot agree on an alternative arrangement.

**g. Urgent or priority financial and maintenance issues:** a party is experiencing financial distress related to the impact of COVID-19 and requires urgent court orders; for example, an application for occupation or sale of a property.

**h. Failure to resume time in accordance with parenting orders or a parenting plan:** where parties agreed to suspend parenting orders or a parenting plan due to COVID-19 restrictions, but there has been a failure or refusal to resume compliance with those parenting orders or that parenting plan following the easing of COVID-19 related restrictions.

**i. COVID-19 related employment:** a party is a front line health worker or engaged in other employment connected with COVID-19 that is impacting parenting arrangements or compliance with orders.

## RECENT CASE

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**In *Kardos & Harmon* [2020] FamCA 328 (7 May 2020) The Court heard an application by a father alleging the mother’s contravention of a parenting order which provided for their 3 year old child to travel from Adelaide to spend time with the father in Darwin and, from January 2020, Brisbane. The Court found there was a reasonable excuse and varied the Orders.**

*“Having regard to that ... information, I am satisfied that the mother believes ‘on reasonable grounds’ that not allowing the child to spend time with the father ... was necessary to protect the health of the child and the mother. This is because the mother would not have been able to maintain safe social distancing during the period of the aircraft travel and there was an unacceptable risk that the child would come into close contact with a person infected by the virus during the course of the aircraft travel.”*

## CASE STUDY / POLL

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Kate and Michael were in a relationship for 10 years. Kate was born in the U.K. and met Michael while on a Contiki and moved to Australia to pursue her relationship with Michael.

They have two children, namely Eve and Isabelle who are age 3 and 4 respectively. They were married in Australia, own property in Australia and both children were born in Australia.

Kate is not in paid employment and cares for the children while Michael works. Kate has no family in Australia. The children are both enrolled in day care.

Kate and Michael separated during the most recent lockdown. Kate is home sick and has booked one way tickets to the U.K. for herself and the children to spend time with her family. Kate has not committed to plans to return and intends to take her time.

Kate's flight has been booked for 12 December 2021.

Michael is concerned that Kate will not return with the children.

***What should Michael do?***

# ANSWER

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- Michael should seek legal advice immediately.

Some options available to Michael:

- Watch list.
- Hague Convention.
- Obtain particulars about the arrangements from Kate.
- Attend an urgent mediation if time permits.
- Seek Orders for future arrangements for the children if time permits.

# Q&A - Russell Kennedy Contact Details

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## Feedback

Scan this QR code to provide instant feedback on the session.