

Russell Kennedy Family Law webinar - Do you know what to do if you are separating?

23 September 2021

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Webinar housekeeping

- 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

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



What we will cover today

A New Court – The Federal Circuit and Family Court of Australia

- The new process for parenting applications before the Court
- New Court Child Services & Roles for Family Report Writers
- Different types of Parenting Reports

Other recent developments of note

- New Rules
- The Light House Project
- Federal Family Violence Orders & a National Strategic Framework
- The National Contravention List

A brief COVID-19 and parenting matters update

What Hasn't Changed



What Remains the Same?

- Best interests of the Children remain the priority.
- The Court continues to look at the Primary and Additional considerations:
 - Primary considerations are the benefit of the child having a meaningful relationship with both parents and the need to protect the child from harm
 - Additional considerations include a number of factors including (not limited to); views of the child, practical difficulty of the time arrangements, cultural considerations including aboriginality, parental capacity and the order that will prevent future Court intervention.

**A New Court:
Federal Circuit and Family Court
of Australia**

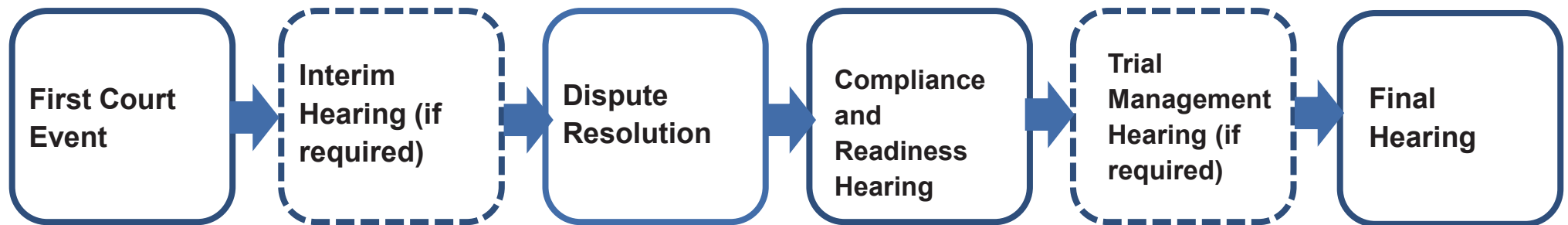


The new process for parenting applications

- Upon filing, all matters commence in Division 2 of the new Court
- Division 1 is the former Family Court of Australia and Division 2 is the former Federal Circuit Court of Australia
- Parenting applications now require when filing a:
 - Genuine Steps Certificate (and a Section 60I Certificate)
 - Notice Child Abuse, Family Violence or Risk
 - Undertaking as to Disclosure
 - Copy of any family violence order affecting the child or member of the child's household
 - Initiating Application
 - An affidavit setting out the background of the matter if a party is seeking interim as well as final parenting orders

The new process for parenting applications

- Once filed, a party's matter starts in Division 2 and then may be transferred to Division 1 by the registry in the event the matter contains certain elements, including also looking at the complexity of the facts, legal issues, remedies and procedures involved
- This would also include matters involving serious allegations of abuse or family violence
- The path a parenting matter will then take is as follows:



New Court Child Services

- The main service in the Court has a new name. While previously known as the Child Dispute Services, it is now called, the **Court Children's Service (CCS)**.
- The role of this Service is about, according to the Court:
 - *Helping parents understand the needs of their children after separation*
 - *Identifying risk factors that impact children*
 - *Identifying family strengths and protective factors*
 - *Providing expert evidence through the provision of assessment reports*
 - *Providing information about resources and support services*
 - *Assisting in the resolution of disputes*
- The role of family report writers in the Court has also changed. While previously called a Family Consultant, these parenting specialists with usually either a social or psychological background are now known as **Court Child Experts**
- These Experts also attend Family Dispute Conferences with a Judicial Registrar at the Dispute Resolution stage of parenting Court proceedings

Different types of parenting reports

Child Impact Report

Traditional Family Report

A Specific Issues Report

Addendum Report

Other recent developments



New rules, pilot programs and better information sharing

- **Federal Circuit and Family Court of Australia (Family Law) Rules 2021** and new **Practice Directions** also commenced 1 September 2021. Many of the changes affecting parenting matters have been covered today, including new filing and Court processes.
- **The Lighthouse Project** - This parenting pilot initiative was introduced from 2020 and currently only operates in the Parramatta, Brisbane and Adelaide registries but there are apparently plans to roll it out across the country.
- **Federal Family Violence Orders** – there are currently discussions taking place in relation to the introduction of FVO's in the new Court in addition to the current applications also being available in State Courts. There is also consideration been given to a universal definition of Family Violence across all jurisdictions.
- **National Strategic Framework** – better information sharing between State and Federal jurisdictions and child protection departments

New National Contravention List

- A new **National Contravention List** was also introduced on 1 September 2021
- Hears matters concerning the contravening of court orders including parenting orders
- The Key Objectives of this List according to the Court are to:
 - *to efficiently deal with Applications on a national basis in a timely, cost effective and safe way for all litigants,*
 - *for Applications to be given a first return date within 14 days of filing,*
 - *to ensure compliance with court orders by all parties,*
 - *to impose appropriate penalties or sanctions where a contravention has been proved and where a party has failed to demonstrate they had a reasonable excuse for non-compliance with court orders,*
 - *to proactively facilitate the resolution of underlying issues in disputes that lead to the filing of such applications,*
 - *to triage appropriate matters to dispute resolution, and*
 - *to be responsive to a party's wishes to resolve matters without recourse to additional litigation.*

A brief COVID-19 update



A brief COVID-19 update

- We have recently been releasing **COVID-19 Series** updates
- These include:
 - **The COVID-19 Court List** continues this year after it was established in 2020 – this list was created specifically to hear urgent and priority parenting (and property) matters nationally where issues arise directly as a result of COVID-19.
 - **Vaccinations** – A party may need to make an urgent application to the Court seeking orders for a child to be vaccinated or immunised in the event the other parent does not agree to it taking place. Such an application could be made in the COVID-19 List.
 - **Electronic Hearings** have also been continuing in 2021 given many States are still subject to lockdowns. These have been taking place on Microsoft Teams while Divorce Hearings and some interim hearings continue to take place via telephone.

Q&A – Your Russell Kennedy Contacts



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Feedback

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



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