



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

UPDATE TO THE PROFESSION

APPLICATIONS FOR REVIEW

This update provides the profession with information about jurisprudential and other developments that relate to Applications for Review of registrar decisions, since the commencement of the new case management pathway in the Federal Circuit and Family Court of Australia (the Court).

Commencing 1 September 2021, all Applications for Review are managed nationally and may be heard by a local or interstate judge, including the Chief Justice/Chief Judge and Deputy Chief Justice/Deputy Chief Judge.

During the first eight weeks of the Court's operations, there are early indications that Applications for Review are not commonly filed and, if considered to have been filed inappropriately, they are mostly discontinued or dismissed. Such applications may be subject to adverse costs orders.

A number of notable judgments (provided below for ease of reference) have been published in relation to Applications for Review since 1 September 2021. These judgments reflect the overarching purpose of the Court and the [Central Practice Direction – Family Law Case Management in respect to](#) the important role of registrars in the new case management pathway.

Senior Judicial Registrar Andrea Evans

Executive Director – National Registrar Operations

Federal Circuit and Family Court of Australia

Dated: 12 November 2021

[Lombardi & Rider \[2021\] FedCFamC2F 57](#)

CHIEF JUDGE ALSTERGREN - 16 September 2021

- Review sought of Judicial Registrar’s decision to refuse to urgently abridge a parenting matter, in circumstances where the listing date provided was 6 weeks from the date of filing the Initiating Application.
- At [32], his Honour considered that “*Registrars are best placed to allocate listings having regard to urgency considerations and the overall business of the Court.*”
- From [43], Alstergren CJ canvasses the overarching purpose of the *Federal Circuit and Family Court of Australia Act 2021* (Cth) as well as the relevant case management provisions in the context of review applications.
- In dismissing the Application for Review, his Honour concluded:

[47] *Parties should not be encouraged to regard a hearing in relation to the review of a Registrar’s decision concerning whether to abridge a matter as an opportunity to agitate their substantive application before a Judge ahead of the time that has been allocated by the Registrar.*

[48] *The Court’s Registrars play a significant role in the proper and efficient functioning of the Court. The Court should not interfere in the listing decision of a Registrar unless genuine urgency can be demonstrated.*

[Canvin & Jesney \[2021\] FedCFamC2F 145](#)

McClelland DCJ – 13 October 2021

- Review sought by the father of a Judicial Registrar’s decision to refuse to urgently abridge a parenting matter, in circumstances where the listing date provided was 4 weeks from the filing of the Initiating Application.
- At [60], DCJ McClelland considered that such a listing date was “*entirely reasonable and appropriately expeditious in the circumstances of this case and could reasonably be regarded as being ‘as soon as practicable’ in the circumstances of the case.*”
- Counsel for the father submitted that one of the motivating factors for filing the application for review was that the allocated first Court event is listed before a Judicial Registrar, as opposed to a Senior Judicial Registrar or Judge. To this end, DCJ McClelland said at [63]:

The fact that the Applicant desired a judge or Senior Registrar to preside at the First Court Event is not a reasonable basis for the Applicant seeking expedition of this matter. The Central Practice Direction has been structured in a manner such that the interests of individual litigants are balanced against the legislative obligation on the Court to effectively and efficiently manage the Court’s overall case load.

- DCJ McClelland dismissed the application and ordered that written submissions be provided to chambers in the event costs are sought.

Riethmuller J (Division 2) – 15 September 2021

- At [9] – [15], Riethmuller J discusses the Central Practice Direction as well as the effective use of Court resources. His Honour considers at [17] that “[t]he review application, it seems to me, was pointless... from the perspective that the order made by the Registrar was obviously a reasonable order to make in the circumstances.”
- At [27], his Honour stated as follows:

The new Court system of having Registrars undertake interlocutory work should not be treated as an invitation to simply lodge review applications without careful consideration of the need for a review application, and the importance of properly using the Court’s resources. A Registrar’s hearing should not be used as a ‘dry run’ or a ‘practice run’ at a case, but rather the main event, with a review application there in the background, in a similar way to that of an appeal if it were a judge dealing with the matter. If the system is not approached in this manner, then litigants and practitioners can expect costs and other consequential orders, to ensure that the processes of the Court are not misused or wasted.

In addition, Judges have made the following comments in a number of other unpublished judgments about Applications for Review:

- In a matter considered on 23 September 2021, Austin J deliberated the appropriateness of a costs order in circumstances where all parties were legally aided. His Honour ultimately found that in pressing what was an “unmeritorious” and “misconceived” review application, the mother and grandparents were forced to mount a defence, effectively depleting the capped legal aid funding available to them. A costs order was consequently made against the father.
- Regarding a party’s attempt to press for the substantive matter to be determined at the hearing of the Application for Review, on 30 September 2021 Austin J said the parties’ approach to the review application is misconceived: “*The review application has only one purpose – to determine the appropriate hearing date for the pending interim parenting dispute. The order made by the Registrar fixing the hearing... is the solitary decision under review.*”