



## Update to the Profession: Operational matters in the family law jurisdiction following 1 September 2021 reforms

Now in its ninth month of operation, the reformed structure of the Courts is showing excellent signs of successful initial implementation. Already, significant inroads are being made into the backload of pending cases, trial pools have been greatly reduced, clearance rates are above pre-pandemic levels, and our increased numbers of registrars and Court Child Experts are continuing to successfully undertake Court work and dispute resolution to greatly assist with the timely resolution of disputes. These significant reforms have been met by the profession, the public and other key stakeholders with great positivity and a genuine willingness to adapt. The Courts appreciate these efforts which have undeniably contributed to the successes seen to date.

Further adjustments are likely to be required to refine and support the ongoing improvement of the reformed family law system and the Courts appreciate the early feedback received from members of the profession and public. The Courts' administration has worked tirelessly to ensure that any concerns that have been raised have been appropriately addressed and, to the extent possible, resolved. To this end, the Courts provide the following update on key items of feedback received to date:

### **Applications for Consent Orders**

Clearance rates for Applications for Consent Orders dropped over the December 2021/January 2022 period in some locations as a result of increased filing rates and a slight increase in requisition rates. Internal changes were implemented in February and March 2022, including the addition of registrar resources. As a result of these changes, the national clearance rate for Applications for Consent Orders is now over 100%, with all applications listed for consideration before a registrar in chambers between 3-4 weeks from the date of filing. When an Application is approved, orders will usually be published and available on the Commonwealth Courts Portal within 24 hours of the listing date.

Applications for Consent Orders are dealt with on a national basis and training for registrars to ensure a consistent approach to requisitions is ongoing. Further training has been provided with a focus on ensuring that no unnecessary requisitions are made. It is important, however, to emphasise that many requisitions can be avoided through careful preparation of consent order material. To avoid the risk of requisition or adjournment, practitioners must ensure that applications are completed accurately and thoroughly, that orders are drafted in clear and enforceable terms and that all procedural matters have been attended to, for example, affording procedural fairness to superannuation fund trustees where required. The Court thanks the practitioners who attend to these matters consistently and precisely, which in turn allows the Court to ensure applications are finalised as quickly as possible.

### **Additional documents required to initiate proceedings**

The Courts acknowledge that feedback received to date has identified concerns around the density and volume of material required to be filed with an Initiating Application. In particular, the Courts accept that the requirement to file a Parenting Questionnaire and/or Financial Questionnaire at the

commencement of proceedings results in a degree of overlap between the information provided in those documents and the information provided in other initiating documents. The Courts are actively progressing the rule amendments that are required to relax these filings requirements. The focus of the new case management pathway is the identification of risk and opportunities for timely resolution and the Courts are conscious of the importance of ensuring that all relevant information is available as early as possible. A guide to the information which must be included in Affidavits has been developed and will be released shortly. Practitioners will be notified of all relevant amendments and information will be readily available on the Courts' website.

The changing of rules and Court forms is a significant undertaking that needs to occur in tandem with various IT system changes and, in light of other ongoing reforms, this issue may take some time to resolve in its entirety. The Courts and parties continue to benefit from the preparation of concise, thorough material and the Courts appreciate the efforts of the many practitioners who continue to do so on behalf of their clients.

### **Subpoenas**

The COVID-19 pandemic presented the Courts with significant challenges in relation to the production, management and inspection of material produced under subpoena. Registry shutdowns and density limits impacted the number of staff who could physically work within their respective registries and resulted in an inability of registry staff to produce hardcopy subpoena material for inspection at previous rates. The Courts have actively encouraged the production and inspection of subpoena material electronically, and have continued the operation of the *Special Measures Information Notice - COVID-19 Electronic Subpoena Inspection*. The Courts are otherwise considering ways to streamline both the production and inspection of subpoena material moving forward and will continue to afford a degree of flexibility where appropriate.

### **Costs Notices**

The consideration of Costs Notices, completed and provided in accordance with the *Central Practice Direction - Family Law Case Management*, is an important component of the Courts' new approach to case management. Practitioners and parties can expect registrars and judges to inquire in relation to costs particularly where the costs incurred appear to be disproportionate to the issues relevant to the resolution of the matter.

The Commonwealth Courts Portal has allowed practitioners to file costs notices since the end of 2021, as opposed to having those documents provided to the Courts by way of correspondence. Practitioners are at liberty to use a template or structure of their preference.

### **Family Reports**

Some practitioners have noted that, over the last 12 months, the wait times for Family Reports have appeared to be longer. This has been the case in some regions. COVID-19 restricted the number of report writers available to interview children and parents face-to-face, and often also led to more than one report being required, when one report would otherwise have been sufficient. We are pleased to advise that, with the alleviation of COVID-19 restrictions and the significant increase in resources for our Court Children's Service ('CCS'), wait times are rapidly reducing across all regions nationally. The Courts are targeting the regions with longest wait times with further resources and initiatives. Wait times are now generally below the times that were experienced before the pandemic.

In addition, CCS have established a National Support Team to action all administrative tasks associated with Family Reports (including Updates & Specific Issues), Child Impact Addendum Reports and Hague Reports. Client contact information and any enquiries regarding these reports should now be directed to [CCSNationalSupportTeam@fcfcoa.gov.au](mailto:CCSNationalSupportTeam@fcfcoa.gov.au). Please note that the arrangements for Child Impact Reports have not changed and communications about these reports should be directed to the local CCS or local registry email address as per the usual course.

CCS have also recently published a factsheet on the Courts' website which may address any specific queries about the various report types prepared by CCS: <https://www.fcfcoa.gov.au/fl/pubs/court-childrens-service>.

### **Lighthouse Project**

The Courts are extremely pleased to have received funding to allow for the rollout of the Lighthouse model nationally. This is a world leading initiative which utilises a bespoke version of the DOORS risk screening model. The Lighthouse Project Team, and the Courts more broadly, are delighted that the importance and success of this initiative has been acknowledged and will continue to assist families by identifying risk, providing access to tailored support services and assisting families to navigate the family law system towards improved outcomes. We will provide further information about the rollout of the Lighthouse model nationally in due course, but otherwise refer to the comprehensive suite of information available in regard to the current Lighthouse pilot on our website: [Lighthouse Project | Federal Circuit and Family Court of Australia \(fcfcoa.gov.au\)](https://www.fcfcoa.gov.au/fl/pubs/lighthouse-project)

### **Ongoing Professional Education**

The Courts take seriously the obligation to act in accordance with the objectives of the *Federal Circuit and Family Court of Australia Act 2021 (Cth)* and the core principles enunciated in our *Central Practice Direction - Family Law Case Management*, to ensure that matters are dealt with as quickly, efficiently and inexpensively as possible. To this end, the Courts have provided wide ranging presentations on the case management pathway and other initiatives. Should any professional organisation wish to invite a senior representative of the Courts to provide such a presentation, requests should be sent to [suggestions@fcfcoa.gov.au](mailto:suggestions@fcfcoa.gov.au).

In addition, the Courts are working to arrange various national seminars across the second half of this year on a variety of important topics, including on the proper drafting of orders in family law proceedings and how to adequately prepare for dispute resolution events, to ensure that practitioners are aware of how best to assist the Courts, as well as their clients, in achieving these overarching objectives. The Courts will provide further information about these seminars in due course, but would of course welcome any feedback or suggested topics for these seminars in the interim.

The Courts otherwise thank the profession, the public and all key stakeholders for their exemplary adjustment during a time of momentous reform. We continue to welcome feedback as part of the Courts' commitment to identifying and meeting the needs of Australian families.

Should you wish to provide any additional feedback in relation to the items above, or any other aspect of the Courts' work, please email [suggestions@fcfcoa.gov.au](mailto:suggestions@fcfcoa.gov.au).

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