

15 tips for family law clients in a coronavirus pandemic

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In these uncertain times when our personal, study and working lives have drastically changed, we expect that the legal advice and assistance our clients will need will change. In many cases, disputes may be avoided by planning for different scenarios and trying to agree with your former partner about how these challenges will be met. If you can't reach agreement then you may need to seek our advice.

I have written a list of 15 things to consider:

1. **Courts:-** It is possible that the COVID-19 pandemic will at some stage cause the Family Law Courts to close for a while and at short notice. The Courts have already advised that they will give priority to more urgent matters, not hearings that can wait. Telephone hearings will become more frequent. You should, where appropriate, try to settle your case through negotiation, family dispute resolution, mediation or arbitration and not rely on the already under-resourced courts being able to hear your case promptly. Alternative dispute resolution is always sensible, but even more so now.
2. **Parenting time:-** Parenting orders were made without pandemics in mind. They may not fit the changed circumstances. For example, if sporting activities are cancelled is there an alternative activity where the child can see the other parent? Interstate travel may be impacted at some stage – how can communication be maintained if the child lives in a different State or Territory to one of the parents?
3. **Changeovers:-** Many changeovers take place at locations which may close, such as schools and take-away outlets. Think about alternative venues now. If the separation was some time ago and tensions have reduced, it may be time to re-think whether changeovers can occur at your home or the other parent's home.
4. **Family violence:-** As couples may spend more time together and be more anxious, family violence may increase. You should be alert to this and seek appropriate referrals for police, therapeutic and other assistance.
5. **Alternate caregivers:-** If child care facilities and schools close, parents (or other younger family members) may be a better option than grandparents who may be

more at risk of serious illness due to their ages. If one parent is working from home maybe they can increase their time with the children? What if one or both parents are sick and unable to care for the children for an extended period? Discuss back-up plans now.

6. **Breaching parenting orders:-** You may be held in contravention of a court order if you do not have a reasonable excuse for breaching the order. Predicting what a court will consider to be a reasonable excuse is difficult, but a complaint that the other parent does not have the same standards of hygiene as you is unlikely to be a reasonable excuse. What if the other parent has contracted the coronavirus but has few symptoms or has been in close contact with someone who has it? You should try to work out how you will deal with these situations in advance. Different families will have different views and different solutions. If you propose to breach a parenting order by not handing over a child because of the risk of infection in the other household, specific medical and other evidence about the risk to the child will be required to defend any contravention application. Please speak to us before breaching a parenting order. The courts treat breaches very seriously.

7. **Intervention orders:-** These are unaffected by the coronavirus. If the terms of the order don't allow you and the other parent to re-negotiate between yourselves changes to parenting arrangements such as the location of changeovers, you should seek legal advice.

8. **Child support and spousal maintenance:-** There may be grounds to seek an increase or decrease if a parent has no work, is made redundant or has a reduced income. DHHS - Child Support may be able to assist or you may need to speak to us, particularly if there is a court order or a binding child support agreement.

9. **Property settlements:-** Court orders and financial agreements which set out the terms of a property settlement but have not yet been implemented may seem unworkable or unfair due to changes in personal circumstances and/or the economy. It may be worthwhile speaking to us as to whether the order or agreement can be reviewed, but the test for impracticability is a high one. It is not enough that it has become unjust to you or difficult for you to carry out the order or agreement.

10. **Superannuation splits:-** These are often expressed in dollar terms. Given the volatility in the share markets, percentage splits might be preferred in the next few months. Also, if allowed by the fund, matching the operative date with the valuation date may give greater protection to you. Splitting orders and agreements should be served upon the trustees of superannuation funds promptly.
11. **Business valuations:-** Consider putting these on hold. Many businesses will be adversely affected by reduced demand, staff absences and the like. A valuation that takes into account the 2018/2019 financial year but not the 2019/2020 financial year may wildly over-state value.
12. **Overseas travel:-** It is a parent's decision as to whether that parent can travel overseas – subject to being allowed to do so by the relevant governments. However, if that parent wants to take the children overseas, don't expect the court to prioritise time for hearing that dispute or that the application will be successful. The parent should also be aware that if they are not permanent residents or Australian citizens, then they may not be allowed back into Australia at all. As of midnight on 15 March 2020, if they are allowed back into Australia they will be required to self-isolate for 14 days which means not seeing the children for that time. There may be fines or other penalties for not self-isolating. Court orders already made which permit overseas travel by children may no longer be practical or enforceable.
13. **Changing parenting arrangements:-** Any agreed changes to parenting agreements should be documented informally by exchange of SMS messages, emails, in a parenting app or letters between lawyers. In some situations the orders should be formally changed. It is probable that even if the courts are closed, consent orders will be able to be processed by registrars working remotely. Legal advice should be sought about the best way to document any changes.
14. **Problems of electronic communication:-** Communication between parents or between lawyers and their clients that is solely by email or text message can result in misunderstandings. If face to face meetings cannot take place, try to have regular calls by videolink, such as Skype and Facetime.
15. **Anxiety:-** In times of uncertainty about personal health, employment, family well-being and the purchase of essentials such as food, medication and toilet paper, you

and the other parent are likely to be more anxious than usual, leading to more parenting disputes. Try to see the other parent's perspective, recognise the pressures the other parent is under and access therapeutic help individually or as a couple.

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