

COVID-19 update

Legal Aid Queensland is monitoring the Commonwealth and Queensland Government announcements and health advice in relation to the COVID-19 Pandemic. As a result, temporary changes to *Legal Aid Queensland's Case Management Standards* have been implemented.

General

Face-to-face appointments should be limited. The lawyer should consider how instructions can be obtained electronically such as telephone, video calls and email. If a face-to-face appointment is required, then strict hygiene and social distancing measures should be adhered to.

Lawyers should ensure they have access to the following:

- Telephone (mobile and/or landline)
- Secure email capability
- Confidential workspace to be able to provide advice and conduct any necessary court appearances or family dispute resolution conferences
- Ability to access documents electronically and securely.

Inform clients and other parties how you will be contactable during the COVID-19 pandemic. As many lawyers are communicating via an electronic platform only, lawyers should check clients, self-represented litigants and other parties have ability to communicate via this platform also. If a person has limited access to computer facilities, the lawyer will ensure a paper version of the communication is supplied in a timely manner.

When lawyers are communicating by telephone or electronic means with a client, the lawyer should (if appropriate) conduct additional identification and safety assessment including:

- Ask about electronic safety and communication
- Direct client to online resources for e-safety education or link in with support services who can assist with this
- Check whilst on the telephone their ability to receive emails to ensure they have access to the email address provided and it is secure
- Obtain written instructions via email where possible, for example confirmation of instructions prior to court representation.

Lawyer's should familiarise themselves with Legal Aid Queensland's dedicated COVID-19 announcements page for any future updates or changes, accessible at the following [link](#).

Family law matters

Family and Federal Circuit Courts

The Family and Federal Circuit Courts are regularly publishing notices and practice directions regarding the management of court matters during the COVID-19 pandemic. Lawyers should regularly review the court websites for updates:

- <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news>,
- <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news>.

Filing documentation

Joint Practice Direction Special Measures in Response to COVID-19 (JPD 2 of 2020) states (in summary):

- All documents should be filed electronically via the Commonwealth Court Portal.
- If the documents are unable to be efiled they should be emailed to the registry (Brisbane.filing@familycourt.gov.au).
- Hard copies should not be posted to the registry.
- Annexures to affidavits in the Family Court should be annexed to the affidavit when it is e-filed. If the annexures exceed two centimetres, an application should be made to the case co-ordinator.
- Court documents and affidavits may be signed electronically by the deponent and/or the lawyer on record for that party, and do not need to be witnessed by a qualified witness. The person signing can type their name in the relevant signature block in lieu of physically signing the document. The deponent will need to be available to swear or affirm the contents at a future court date.

Joint Practice Direction The COVID-19 List (JPD 3 of 2020) states (in summary):

- A fast-tracked COVID-19 List has been established to swiftly deal with applications that are filed as a direct result of the COVID-19 pandemic and the matter is urgent.
- The matter must be capable of being dealt with by electronic means.
- Prior to filing, where safe to do so, reasonable attempts must have been made to resolve the issue, but were unsuccessful.
- Special filing requirements apply, including the use of the COVID-19 template affidavit of the relevant court and a cover letter. The Affidavit must address the criteria in paragraph 15 of the JPD.
- Applications to be placed in the list are to be filed by email to COVID19List@familycourt.gov.au or COVID19List@federalcircuitcourt.gov.au
- The application may be heard by a Registrar, and in some instances, a Judge in the first instance. Consideration is given to whether the matter is suitable for urgent mediation and conciliation.

Subpoena

- Subpoena viewing at all registries of the courts is by appointment only. Requests for an appointment should be made by emailing the relevant registry.
- Access to subpoenaed material that has 'photocopy access' may be provided at the discretion of the registry. Registry staff will email approved documents. Photocopy access will not be made to documents including a child welfare record, criminal record, medical record or police record, in accordance with sub-rule 15.30(2) of the *Family Law Rules 2004* and sub-rule 15A.13(2) of the *Federal Circuit Court Rules 2001*.
- Lawyers and parties should only make appointments to view subpoenaed material if the matter is critically urgent.
- Service of subpoena should be in accordance with the person/organisation subpoenaed requirements and where possible, by electronic means. Some agencies are agreeing to defer payment of conduct money. Some agencies are requesting conduct money be held by the lawyer until advised. It is important that the lawyer confirm in writing the relevant person/organisation's preferred method.

Personal service

When filing documents that require personal service, such as Initiating Applications, the lawyer should consider whether personal service will be possible due to lockdowns and restrictions.

The lawyer should consider whether seeking an order for substituted service via email may be more appropriate.

Attendance at court

The Family and Federal Circuit Courts continue to operate electronically and via Microsoft Teams. Lawyers should be familiar with the relevant practice directions and notices published on the Court websites.

Family Reports

On 3 April 2020, the court issued a notice stating that all interviews conducted by Child Dispute Services will occur electronically, unless in exceptional circumstances. Please refer to the Court's [published notices](#) for updates to this.

Lawyers may also experience difficulties in arranging family reports with private report writers, as most report writers will only be able to conduct interviews by telephone, limiting their ability to observe and assess relationships of parties and children. Reports conducted by telephone may have limited weight. Consideration should be given to not proceeding with commissioning a report at this time. If such a report is obtained by the Independent Childrens Lawyer (ICL), there will be no guarantee of a further grant of aid for an updated family report.

Independent Childrens Lawyers

Independent Childrens Lawyers should consider whether it is appropriate to meet a child/young person in a face to face meeting while the current restrictions are in place. Consider whether other ways of meeting with the child are appropriate (e.g. telephone or video conferencing). See [the COVID-19 good practice guide for lawyers – meeting with children via technology factsheet](#) for further information.

Advising clients regarding compliance parenting orders

The courts have released information and resources to assist parties with compliance with parenting orders due to COVID-19 and they are published on the court websites.

Family Dispute Resolution

Until further notice, conferencing will occur by telephone only. Lawyers, and their clients if attending from a different location to their lawyer, must have access to a landline telephone to participate in the conference. Legal Aid Queensland cannot facilitate attendance by mobile phone due to confidentiality and security reasons.

Communication with the conference organiser should be by email to the conference organiser directly, or if unknown, by email to drs@legalaid.qld.gov.au. The conference organiser may ask additional screening questions in relation to the lawyer and clients:

- a) Ability to attend the conference by landline telephone;
- b) Ability of their client to access, sign and return documents (if applicable),
- c) Ability of their client to attend from a location that has privacy and is without interruption.

Practical consideration will need to be given to the signing of documents by electronic and/or physical means.

If a client is attending the conference at a different location to their lawyer, the lawyer should discuss practical issues with their client prior to the conference date, including:

- Clients being able to receive and read documents during the conference,
- Clients being able to sign documents electronically, including by typing their name in the signature block,
- Clients finding somewhere in their home that is private and quiet,
- Client having documents with them to look at if needed, and
- If children are at home during the conference, clients making sure that they can be left safely in another room during the conference. Client's or their lawyers will need to let the mediator know that children are home with them so that the mediator can support the client, for example, by taking breaks.

Attendance by videoconference is currently under investigation and the legal profession and participants will be notified upon approval.

Domestic violence matters

The Magistrates Court has published practice directions regarding the management of court matters during the COVID-19 pandemic. The lawyer should regularly review the court website for updates. There are different practice directions depending on regions. For the most recent practice directions please visit the [Queensland Courts website](#).

New statutory declaration arrangements have been made by the courts to ensure clients are still able to file Applications for Protection Orders where they are unable to physically attend court, Justice of the Peace or lawyer's office. Consider the options available and tailor advice regarding options to the client and their COVID-19 limitations.

Duty lawyer services

On 16 March 2020, Legal Aid Queensland suspended the provision of face to face domestic and family violence, child protection and family law duty lawyer services by in-house lawyers and now offers a telephone duty lawyer service.

Parties can access this service by calling **1300 267 762** no later than 3 days prior to their court date to seek telephone legal advice.

It is noted that local arrangements have been made for duty lawyer services across the State. Local arrangements for duty lawyer sessions must not include a face-to-face service with clients for the purpose of providing advice and taking instructions. All legal advice sessions must be conducted remotely. This applies to LAQ staff, contractor preferred suppliers and community legal centres. Local arrangements for appearance as duty lawyer at court events will vary depending on the resources available to the Court and relevant stakeholders.

Duty Lawyer session reports should be completed in the usual way by preferred suppliers and in-house lawyers should follow the instructions in the COVID-19 Resource folder located in RM8. If work is done remotely outside the day of the callover, but in relation to matters listed for that callover, the time should be captured as a cumulative total of time spent in relation to that callover.

If a conflict of interest is identified, please refer the client to Legal Aid Queensland.

When conducting telephone duty lawyer services, the lawyer must:

- have access to digital copies of fact sheets to provide to clients by email;
- have digital copies of the client's court documents emailed to them;
- if representing the client in court, arrange for the client to provide written instructions for you to appear on their behalf via e-mail) or if necessary, also appear by telephone during the court event.
- If necessary, have the client confirm their instructions on the record, for example . when the client is consenting to an order.

For domestic and family violence matters, rostered duty lawyers (aggrieved & respondent) for each court, should keep each other informed (or the court, if applicable) of their email and telephone contact details should the opportunity for negotiations prior to court/or organising urgent appearances arise.

Child protection matters

The Magistrates Court has published practice directions regarding the management of court matters during the COVID-19 pandemic. The most recent COVID-19 Practice Direction (PD4/2020 Childrens Court (Magistrates Courts amended 7 April 2020) is accessible [here](#).

Some registries are not strictly complying with the practice directions. As such, lawyers should also liaise with the registry to ensure that they are aware of how that particular registry is managing their list.

Temporary changes to the case management standards to be consistent with health advice, and government office closures, are as follows:

1. File inspections are to be completed by contacting the relevant Child Safety Service Centre (CSSC) in writing and requesting that copies of relevant documents be provided electronically.
2. Documents should be filed electronically by emailing them to the relevant registry. Service on government agencies is to be effected electronically.
3. Separate representatives should consider whether it is appropriate to meet the child/young person in a face to face meeting while the current restrictions are in place. Consider whether other ways of meeting with the child are appropriate (e.g. telephone or video conferencing). See the [COVID-19 good practice guide for lawyers – meeting with children via technology factsheet](#).
4. Separate representatives should consider whether it is appropriate to obtain social assessment reports while the current restrictions are in place. Lawyers cannot require parties to participate in an assessment in a way that would potentially place their health and that of the children/carers/departmental workers/other children in placement/report writer at risk. Lawyers should consider the following questions in coming to a decision:
 - a. Is there a risk that a party will be denied procedural fairness if interviews are conducted electronically? Consider that child protection clients may not have access to technology/be familiar with technology/present the same way over the telephone/video link as they would in person and this could be prejudicial towards them.
 - b. Are the parties being afforded procedural fairness if an assessment were completed in the absence of contact observations?
 - c. Will the assessment be stale by the time the matter goes to hearing?
5. Case management standards in relation to Family Group Meetings and Court Ordered Conferences continue to apply, with lawyers attending by telephone or video conferencing.

Consider your client's information privacy and ability to communicate in these circumstances. Are they able to talk freely if they live with a domestic violence perpetrator, do they have email access and are computer literate and is there a risk that someone else might access their emails?

Practitioners should consider whether the risk of domestic violence is likely to increase as a result of parents isolating together and consider whether an application should be made for a Protection Order. If an application is made for a lengthy adjournment on the basis of COVID-19, consider what can occur in the interim and what else can be done to progress the matter.

While court registries are still open, many registries are accepting documents by email. If you are issuing subpoenas, you will need to give consideration as to how the subpoena can be served and conduct money is going to be paid. You should be prepared to make submission with respect to service and also consider the logistical difficulties of inspecting the subpoenaed material.

If you are concerned that COVID-19 may affect the trial proceeding, seek that the matter be brought on to obtain further directions. Also consider whether trial material can be deposed to in a different manner. For example, you could seek directions that the client not be required to have an affidavit witnessed or file an unsigned copy of the document noting that the client will swear the contents are true in the witness box.

Queensland Law Society — COVID-19 Update on Courts, Commissions, Tribunals, Titles and property

QLS has created a resource to provide information to members on the evolving COVID-19 situation and the response of the Courts and Tribunals in Queensland as soon as the information becomes available. QLS will continue to communicate regularly with the Courts and will update members on any new developments. Information is accessible via the following [link](#).