



## FAMILY COURT OF AUSTRALIA

GPO Box 9991  
DX 40117 Brisbane Uptown  
Telephone: 3248 2235  
Facsimile: 3248 2251

Legal Section  
Commonwealth Law Courts  
Corner North Quay and Tank Street  
Brisbane Q 4000

03 December 2010

Bar Association of Queensland Standing Committee on Family Law

Family Law Section Law Council of Australia

Qld Law Society

Legal Aid Queensland – Family Law

Family Law Practitioners Association

Downs & South Western Law Association

Central Queensland Law Association

Sunshine Coast Law Association

FLPA – Lismore

FLPA – Coffs Harbour & Clarence River

Gold Coast Law Association

Qld Assn of Independent Legal Services

*By email*

Dear Sir/Madam

### **JOINT APPLICATIONS FOR CONSENT ORDERS**

At a recent meeting of the Court's Case Management Committee, a representative of the profession raised a concern about requisitions raised by Registrars in joint applications for consent orders and delay in dealing with these applications. At that Case Management Meeting, it was suggested that I write to the profession and detail the difficulties Registrars were encountering with consent order applications as this may assist all of us in getting better throughput with these applications.

By way of background the Brisbane Registry deals with some 3500 joint applications for consent orders each year and accounts for about one-third of all joint applications filed in the Family Court of Australia nationally. In the quarter ending September 2010, Brisbane saw a 17% increase in the joint applications filed, while nationally the increase was only 4%. This workload is therefore significant and is dealt with by Registrars when time is available from other assigned work.



The Brisbane Registry aims to deal with these applications within 6 weeks of filing. In the main that benchmark has been reached during this year although during the middle of the year there may have been some applications that have taken longer because of turnover of staff and an issue that arose with the transfer of joint applications from the Magistrates Court to this Court. However if an application is requisitioned, that obviously will add significantly to the time that it takes to finally determine the joint application.

Registrars frequently see the following technical difficulties in applications for consent orders and these will lead to the application being requisitioned:

1. In de facto property applications, the failure to provide the written consent by the parties and/or statement of legal advice by a legal practitioner where the parties are opting in.
2. Parties using an obsolete version of the Application form.
3. Parties not completing all the required questions of the joint application.
4. Parties not attaching copies of orders, undertakings, parenting plans or agreements or providing details of same.
5. Parties failing to provide adequate information in relevant parts of the application to address the threshold of whether the financial orders are just and equitable, especially in the situation where one of the parties is not legally represented.
6. The inclusion of child support orders in the Minute of Orders.
7. The parties not providing three clean typed certified copies of the Minutes of Consent Order or a form of order for the Registrar to sign.
8. The Affidavit of the Applicant/Respondent in the application not completed.
9. Parties not supplying a valuation/completed Superannuation Information Form where a superannuation splitting order is sought.
10. Parties seeking an order for The Family Law Act 1975 for "joint parental responsibility" notwithstanding the decision in N and N [2007] FamCA 168.
11. Parties failing to address the issue of parental responsibility in the orders.
12. The drafting of Orders to be made in the Federal Magistrates Court and under that Court's Rules rather than in the Family Court of Australia and under the Family Law Rules.

If we can reduce the level of requisitioning, this should lead to an overall reduction in the time it takes for this Registry to determine these joint applications. One of the very frequent matters that give rise to a requisition is the failure to provide a valuation where a superannuation splitting order is sought. There is a difference of opinion in the Court as whether or not a valuation is required in a consent application. At the moment the view seems to be that a Registrar exercising delegated jurisdiction must require the valuation. If the profession is of the opinion that this view is incorrect it would assist me, in discussions that I having, to be provided with the legal basis for that view.



I would appreciate any assistance you can give the Registry in reducing the incidence of the above difficulties occurring in application for consent orders and thus reducing the current level of requisitioning of applications.

I am also happy to discuss the process of handling these joint applications if that would be useful. Obviously any discussions could only be about the process in general and not about particular applications, which remain in the province of the Registrar dealing with the application.

Yours faithfully

A handwritten signature in black ink, appearing to be "C. Spink".

Christopher Spink  
Co-ordinating Registrar (Northern Region)