



FEDERAL CIRCUIT COURT OF AUSTRALIA

Notice of Risk

Commencing 12 January 2015



Legislation

- Under the Family Law Act, parties are required to file “*a notice in the prescribed form*” if they allege that:
 - a child to whom the proceedings relate has been abused or is at risk of being abused (section 67Z); or
 - There has been family violence by a party to the proceedings or there is a risk of family violence by a party to the proceedings (section 67ZBA)
- Expanded definitions contained in sections 4 and 4AB.
- Previously, the Form 4 – Notice of Child Abuse or Family Violence has been the prescribed form.
- The court has a duty under section 69ZQ(aa) to ask each party particular questions concerning child abuse and family violence.



Background to the development of the Notice of Risk

- The Federal Circuit Court is a high volume court and intake lists regularly contain more than 20 matters.
- Screening to identify various risk factors at the earliest opportunity is desirable to aid the effective early intervention case management pathway of the Federal Circuit Court.
- There has been ongoing non-compliance with the legislative requirements.
- The Court's experience is that there has been an under-reporting of child abuse, family violence or risk of same.
- The Form 4 does not identify a range of other risks that are relevant in parenting proceedings.



Purpose – Notice of Risk

The Court has decided to introduce a new form which will:

- Better identify a wider range of risks to children in parenting proceedings (e.g. mental ill-health, drug and alcohol abuse, parental incapacity etc.)
- Improve compliance with legislative requirements. In particular assisting self represented litigants identify risks through targeted questioning.
- Assist the Court to fulfil its obligation pursuant to section 69ZQ of the Family Law Act.
- Enable more timely notification to relevant child protection authority and thus more timely responses (prior to the first return date).
- Facilitate the early identification of a range of risks and ensure matters receive appropriate, targeted, early intervention.



The form has been designed to be:

- as simple as possible to complete (a series of tick-a-box questions of 'yes' or 'no'. If yes is selected further particulars are required); and
- Comprehensive enough to alert the Court to significant risks.

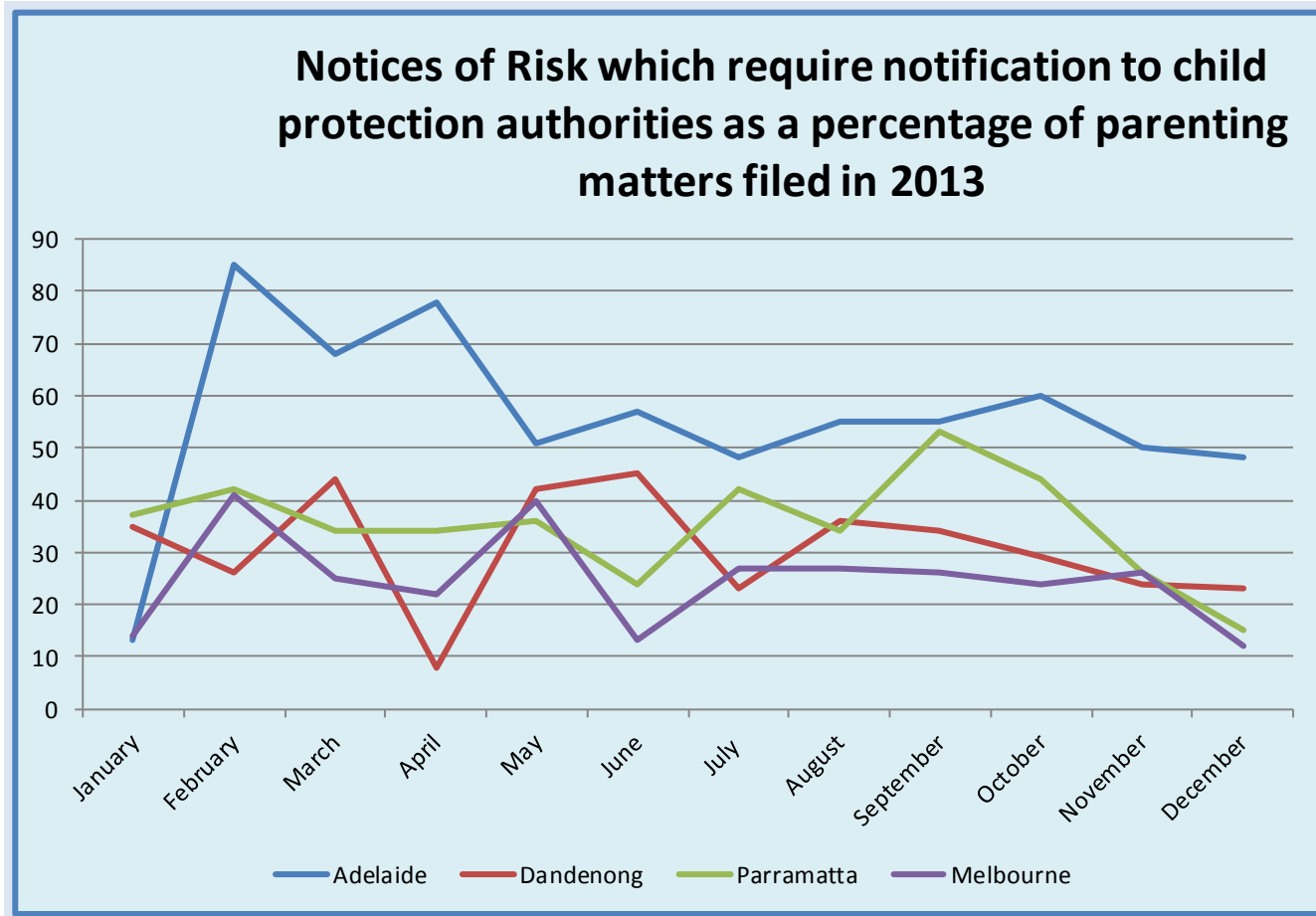
It is anticipated that the mandatory filing of the form will facilitate useful and more accurate data being collected.



Pilot in South Australia

- The Court commenced a pilot of the Notice of Risk in South Australia from 4 February 2013. Changes were made to improve the process during the pilot.
- The pilot has been subject of extensive consultation and evaluation.
- An evaluation of the pilot has been completed (available at www.federalcircuitcourt.gov.au)
- The evaluation found:
 - Higher level of reporting of risk as a percentage of children’s matters than other comparable locations.
 - Greater compliance with legislative requirements.
 - Judges found the responses from the child protection authority useful in the effective early intervention case management pathway.

Comparative analysis of Notices of Risk between locations





Process

- The Notice of Risk replaces the Form 4. It is not an additional form.
- A Notice of Risk is to be filed with **all** Initiating Applications and Responses seeking parenting orders as from 12 January 2015 (Rule 22A.02). An Application or Response will not be accepted for filing without the Notice.
- This is a departure from the current requirement to file a Form 4 only in the instances where allegations are made which come within the sections 67Z and 67ZBA.
- Only those Notices meeting statutory notification requirements (answering Yes to Question 2 of the Notice of Risk) will be sent to the relevant child protection authority at the point of filing.
- Affidavit material is not sent to the child protection authority as a matter of course. The particulars of the alleged conduct are included in the form.



Completing and filing the Notice of Risk

- Instructions for completion are included which also set out the relevant legislative provisions.
- An affidavit setting out the evidence on which the allegations are based must be filed with the Notice of Risk. (An affidavit is not required if the evidence relied on is contained in the affidavit filed with the application or response in accordance with rule 4.05).
- The form will not be accepted unless the risks are particularised clearly in the spaces provided in the form (examples are included in the instructions for completion)
- Ordinary Service



Filing and listing

- The Notice of Risk will be able to be e-filed.
- An Initiating Application or Response will not be able to e-filed without a Notice of Risk.
- A court date will be able to be selected when e-filing (this is a change from the current practice wherein if a Form 4 is e-filed a date cannot be selected but the matter is manually listed by the registry).
- Matters with urgency should continue to seek an urgent listing or listing at short-notice. The filing of the Notice will not trigger a quicker listing.

Amendments and transfers

■ Amendment of notice of risk

If after the filing of a Notice of Risk, new facts arise which would require the filing of a notice of risk for the purposes of subsections 67Z(2) or 67ZBA(2) the person must file a new notice of risk and an affidavit (see rule 22A.04).

■ Proceedings transferred from another court

If a proceedings in which a parenting order is sought is transferred to the Court from another court each party must file and service a notice of risk and affidavit before the first court date (see rule 22A.05).



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Conclusion