

What is the Critical Incident List?

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The Critical Incident List is a fast-track process within the Federal Circuit and Family Court of Australia (“the Court") designed for urgent parenting cases. It applies where a child has no available parent to care for the child due to death, critical injury or imprisonment linked to family violence. This blog explains what the Critical Incident List is, who can apply, how the process works, and the types of parenting orders the Court can make.

It was established on 6 June 2022 following collaboration between the Courts’ Family Violence Committee and the Queensland Homicide Victims Support Group.

Who can file in the Critical Incident List?

To be accepted into the Critical Incident List, an application must meet all of the following criteria:

1. The applicant is **not** a parent of the child/children the application relates to;
2. There is no available parent to care for the child/children as a result of death, critical injury or incarceration relating to family violence;
3. The applicant is seeking urgent orders for parental responsibility concerning major long-term issues (such as education, religion, or place of residence) to ensure appropriate arrangements can be made for the child or children; and
4. There are no existing final Parenting Orders or Child Welfare Orders in place which allocate parental responsibility and care arrangements to a non-parent.

Applicants may include an Independent Children’s Lawyer, a State or Territory welfare authority, or a non-parent adult connected to the child or children.

Applications made to the Critical Incident List are exempt from the requirement to file a Genuine Steps Certificate or Parenting Questionnaire, both of which are ordinarily pre-action procedures required for parenting applications.

What will happen after the application has been accepted?

Once an application is accepted for filing in the Critical Incident List, the National Assessment Team (NAT) will allocate the matter to the Judge responsible for the List in Division 1 of the Court. The Court aims to list Critical Incident matters for hearing within seven business days of the application being filed, subject to demand and judicial availability.

If an application is not accepted into the Critical Incident List, it will proceed through the Court in the same way as an ordinary Application for Final Orders.

What Orders can the Court make?

The Court may make orders determining where the children will live (either on an interim or final basis), which non-parent adult will hold parental responsibility, and any necessary procedural orders – such as exemptions from filing documents that are usually required in parenting proceedings.

Depending on the circumstances, the Court may make time-limited orders if a parent is expected to become available to care for the children in the future (for example, following recovery from a critical injury or release from prison). In other cases, the Court may make final orders that remain in effect until the child or children reach 18 years of age.

Importantly, the Court maintains a child-focused approach in all family law matters. The safety and well-being of the children are paramount. The Court will not automatically order that the children live with the applicant or that the applicant be granted parental responsibility. All decisions are made based on what is in the best interests of the children.

Get help from a family lawyer

Making an application to the Critical Incident List can be a complex and stressful process, especially if the applicant is also tasked with caring for the children on an interim basis.

If you would like to discuss your circumstances and how the Critical Incident List might be relevant to your matter, please get in touch with one of our family lawyers to make an initial appointment.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.