

Family law, children and domestic violence

Family law is the area of law that deals with family matters including:

→ children

→ child support and maintenance

→ divorce

→ property.

Most family law issues in Australia are covered by the *Family Law Act 1975*. This is a Commonwealth Act that applies in all states and territories in Australia. The Act applies if you have been married or in a de facto relationship. It also applies where there is a disagreement about children, regardless of whether their parents were married, in a de facto relationship or never in a relationship.

This chapter gives information about how Family Courts deal with domestic and family violence, explains parenting orders and other types of orders made by the family courts in relation to children. It will also point you towards places where you can get more information, legal advice and support.

While this chapter focuses on family law in relation to children, there is a list of contacts for queries about divorce and property settlement at the end of the chapter.

Family Courts and family violence

In NSW family law matters are usually dealt with by the Family Court of Australia, the Federal Magistrates Court, or sometimes by the Local Court.

The *Family Law Act 1975* sets out the special responsibility of the Family Courts to protect you and your children from domestic and family violence and its effects. Any decisions made in the Family Courts must:

- recognise any violence in your family
- ensure any orders it makes are in line with an Apprehended Domestic Violence Order (ADVO) that already applies to your family, or explain to you why the orders change the ADVO and what the changes mean
- ensure your children are not exposed to an unacceptable risk of violence. The Court assesses the risk in deciding what relationship a child should have with a parent if family violence or abuse is involved
- consider your children's right to know and have a relationship with both parents.

It is important that you tell your lawyer or the Family Court about any violence you have experienced so that the court can take this into account in its decisions. Tell the court about any Apprehended Domestic Violence Orders, domestic violence charges, or other court orders that relate to your family. It is also vital that you discuss this with a lawyer as soon as possible. Contact details of services that can provide legal advice or referrals are included at the end of this fact sheet.

What is a parenting order?

A parenting order sets out parenting arrangements for your child. A court can make a parenting order based on an agreement between you and your ex-partner (these are called Consent Orders), or a Judge, Federal Magistrate or Local Court Magistrate can make orders after a court hearing. A parent can be punished for not obeying a parenting order.

A parenting order may include:

- where your children will live

- the amount of time the children spend with you, their other parent and other people

- how you and their other parent will share parental responsibility

- how your children will talk to, or have contact with, other people

- financial arrangements for your child

- any other aspect relating to your children's care, welfare or development.

A parenting order can also outline the process you and the other parent need to follow to try to work out any disagreements about what is in the order, before you apply to the Court for any changes.

A parenting order or parenting plan may say that two or more people have equal shared parental responsibility for children. This means you must decide together about any major long-term issues that affect your children. This means you all need to talk with each other and agree on things like where the children will live, what school they will go to, how they will observe their religion and culture and medical treatment. It does not cover day-to-day decisions such as what your children eat or wear.

A parenting order is in force until a new parenting order or a parenting plan changes it in some way. Even if the needs or circumstances of you, your children or the other party change, the order applies until a court formally changes it or you enter into a parenting plan. If you and the other parent agree to change the arrangements, you can agree on a parenting plan or apply for Consent Orders that vary the existing orders.

For more information about Consent Orders call 1300 352 000 or go to www.familylawcourts.gov.au

What is a parenting plan and how is it different from parenting orders?

Arrangements for a child might be set out in a parenting plan. A parenting plan is a written agreement between you and your former partner (and others if needed) that sets out how you will care for your children.

Parenting plans cannot be enforced by the courts. This means that if a parenting plan is breached, the court cannot do anything to fix the problem. However a court will look at what is written in any parenting plan when they make decisions.

For more information about parenting plans call 1800 050 321 or go to www.familyrelationships.gov.au

How does domestic and family violence influence the Courts' decisions about parenting orders?

When the Family Courts make decisions about children's issues they weigh up two main considerations. These are:

- the benefit to children of a meaningful relationship with both parents

- the need to protect children from physical or psychological harm, abuse, neglect and family violence.

When the Court makes a parenting order, it assumes that it is best for your children if you have equal shared parental responsibility with their other parent, unless there is a reason why this is not in the best interests of the child. One reason might be if there was any violence or child abuse by a parent or a person who lives with the other parent.

Usually when you apply for a parenting order you need a certificate that says you have been to family dispute resolution. If there has been domestic and family violence or child abuse, or you feel there is a risk to you or your children's safety, you do not have to go to dispute resolution first. You can go straight to the Court to apply for an order. You must be able to prove the abuse or violence, or a risk of these, if you do not have a certificate. The Court must believe that your fear of violence or concern for your wellbeing or safety is reasonable.

What do I do if the other parent is not obeying the parenting orders?

When a parenting order is made, each person affected by the order must comply with (follow) the order. If you believe another person has not complied with an order, you can seek legal advice, or notify the court by making a 'contravention application'. For more information see the fact sheet '*Compliance with parenting orders*' on the Family Law Courts website www.familylawcourts.gov.au. Also see the Legal Aid NSW Factsheet '*My ex partner is not following the court orders about our children- what can I do?*' available at www.legalaid.nsw.gov.au/publications.

What other kinds of orders can Family Courts make about children?

Location and Recovery Orders

If you or the other parent breach a Parenting Order and cannot be found, a court can make a Location Order. This means other people or organisations including Government Departments must give any information they have to the Court about the location of the children.

If you or the other parent breach a Parenting Order by not returning your child, a court may also make a Recovery Order. Recovery orders can include orders that the Marshal of the Court and all Federal, State and Territory police officers find your child and place them where the orders say the children should live until final orders are made.

For more information about location and recovery orders see the Legal Aid Fact sheet '*My ex-partner has taken our children without my permission... What can I do?*' available at www.legalaid.nsw.gov.au/publications.

Orders to prevent children from being taken overseas

If you are worried that the children might be taken out of Australia you can apply to the Court to place the children on the Airport Watch List. If you are concerned that the children are at risk of being removed from Australia you should seek urgent legal advice by either telephoning LawAccess NSW on 1300 888 529 or contacting Legal Aid NSW or a Community Legal Centre that provides this sort of advice.

A child's name can be placed on the Airport Watch List immediately after you have filed an application at court if you ask for that to be done in your application. You must then make sure that you immediately provide the Australian Federal Police with copies of any orders made.

For more information about preventing children from being taken overseas, and the role of the Federal Police go to www.afp.gov.au/policing.

What can I do if I am concerned about my safety when I go to the Family Court?

If you have any concerns for your safety it is important you let the Family Court know prior to attending a court event, including conferences or hearings. You can inform the Court by calling 1300 352 000.

You can discuss your concerns with a Client Service Officer. The Officer will ask you a few questions and decide what arrangements are needed to enable you to participate in court events safely. You should call at least two days before your court event so arrangements can be made for your safety. If there is an existing ADVO, you must tell the Courts before your first court event.

Where can I get more information about divorce and property settlements?

For more information about family law see the Legal Aid NSW brochure *What happens when your relationship ends?* This booklet assists families in matters such as divorce, property, making arrangements for sharing children, and child support. It is available at www.legalaid.nsw.gov.au/publications.

Where can I get more legal advice, help and support?

Legal Aid NSW

www.legalaid.nsw.gov.au to find your nearest office.

LawAccess NSW

A telephone service which provides legal information, referral and in some cases legal advice.

Phone: 1300 888 529 or TTY:1300 889 529.

Family Relationship Centre

Visit www.familyrelationships.gov.au to find your nearest centre.

Family Relationship Advice Line

A national service on 1800 050 321.

Family Courts of Australia

Phone: 1300 352 000.

Visit www.familylawcourts.gov.au. The Family Court and the Federal Magistrate Court share their registry and telephone information services.

NSW Legal Aid Child Support Service

This is a service for people who are having problems with child support. Please call for an appointment.

Phone: 02 9633 9916 (Sydney and metropolitan areas) or 1800 451 784 (outside Sydney).

Information about where to get help and support is available in *Your Court, Your Safety* online at www.lawlink.nsw.gov.au/cpd