



FAMILY VIOLENCE AND PARENTING

Making arrangements for your children after separation where there has been family violence can be complicated. It is important to be aware of the way family violence is dealt with in parenting matters. You should obtain legal advice about the options available to you and speak to a family violence counsellor about safety planning for yourself and the children.

In family law:

- **Family violence** means violent, threatening or other behaviour by a person that coerces or controls a member their family, or causes them to be fearful.
- Children may be **exposed to family violence** in situations where “the child sees or hears family violence or otherwise experiences the effects of family violence”.
- **Abuse of a child** includes an assault, a sexual assault, involving a child in a sexual activity, serious psychological harm, including harm caused by or being subjected to family violence and serious neglect.

Do I have to enter into an agreement or go to court?

If you and your ex are unable to reach agreement about parenting arrangements, going to court is not the only option. In some circumstances, doing nothing may be the best approach. It is important to obtain legal advice about all options.

If you do decide to go to court, as a general rule, before starting proceedings you must attempt Family Dispute Resolution (which is similar to mediation), unless you are exempted. Family violence can be an exemption.

Children’s best interests

When making decisions about a child, the main concern of the family courts is the **best interests of the child**. In deciding this, the primary issues for consideration are:

1. Whether the child will benefit from having a meaningful relationship with both parents; and
2. The need to protect a child from physical or psychological harm from being subject or exposed to abuse, neglect or violence.

When weighing up these two factors **greater weight** is given to the **protection of a child**.

How are domestic violence protection orders (DVPO)s taken into account?

The family courts are required to consider whether a DVPO has been made in relation to a child or a member of the child’s family in determining a child’s best interests. You are required to tell the court about the existence of a DVPO.

Family courts should try to make consistent orders

The family courts must to try to make parenting orders consistent with DVPOs and that don’t expose a person to an ‘unacceptable risk’ of family violence. If there is inconsistency between the conditions of a parenting order and an existing DVPO then the parenting order overrides the DVPO to the extent of the inconsistency.

Can parenting orders be changed during DVPO proceedings?

If there is an existing parenting order and an application is made later to a local/Magistrates Court to make or vary a DVPO, the local/Magistrate’s court has the power to revive, vary, discharge or suspend the parenting order, if the parenting order would (or be likely to) expose a person to family violence. For a range of reasons, these applications are not often made. Obtain legal advice.

Notifying the family courts about family violence and child abuse

If there are issues of family violence (or risk of it) or child abuse a **Form 4 - Notice of Child Abuse or Family Violence or Risk of Family Violence** should be filed and served on all parties involved in the court matter. This notice sets out concisely all the details and evidence of the allegations of violence and/or abuse. It alerts the courts to the existence of concerns about violence and abuse in the case, enabling prompt action (including making interim orders that protect the child and other people) to be taken.

Consent orders

Where parties agree about parenting arrangements and ask the family courts to make consent orders they must advise the court about any concerns they have about abuse; neglect or family violence and how the orders being asked for deal with these matters; if there is a DVPO in place and if the proposed parenting orders are consistent with it. If the consent orders sought are not consistent with a DVPO then you will have to attend court.

Presumption of Equal Shared Parental Responsibility

The family courts presume parents will have equal shared parental responsibility (ESPR) unless it can be proved there is family violence, child abuse or it is not in the best interests of the child. Where parents have equal shared parental responsibility, they must consult with each other and try to reach agreement about major issues such as education, religion, where the child lives, the child's name and health. If there has been

family violence and it would be difficult or unsafe to consult with the other parent about these issues then you may want to argue against the application of this presumption.

No presumption of equal time (50:50)

There are no hard and fast rules about how much time a child should spend with each parent. This will vary with each family and each child. There is no presumption that children's time will be shared by parents equally.

Can I move away?

Relocation orders are difficult to obtain. Seek legal advice before moving with your children. If you move without the court's permission or the other parent's consent, the court may order that the child be returned or that the child live with the other parent even when there has been family violence

It is important to know, you cannot just say there was family violence or that a DVPO exists, the family courts require evidence of the violence to make appropriate orders. If you have witnesses or other evidence to support your case, this should be provided to the court, as well as a detailed account of the violence, its impact on the children and you.

You can find more information in the "Children's Chapter" in our Separation Booklet at www.wlsq.org.au/resources/legal-toolkit/. Please note some sections of the booklet relate only to Queensland law. Obtain legal advice from a lawyer in your State/ Territory.

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Legal Advice:

Find a Women's Legal Service at www.wlsa.org.au
Find a Community Legal Centre at www.nacclc.org.au
Find a Legal Aid Office at www.nationallegalaid.org.au

Domestic Violence Assistance:

1800 RESPECT 1800 737 732 (24hrs/7days)
Call Police 000 (emergency) or 131444 (non-emergency) (24hrs/7days)

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