

Frequently asked questions - children

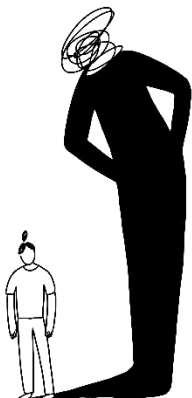


FAMILY VIOLENCE LAW HELP

www.familyviolencelaw.gov.au

I have experienced domestic and family violence. Do I need to tell my lawyer?

Yes. Some people find it hard to talk about the violence they have experienced, however, it is important to tell your lawyer:



- it may change the legal advice they give you and how they run your case
- the most important consideration for the court when deciding what is in your child's best interests is the need to protect them from harm
- if your case goes to the Family Courts, the law says you must tell the court if there's been any domestic and family violence
- it may change whether Family Dispute Resolution (mediation) is appropriate in your case
- your lawyer may be able help to make safe arrangements if you have to go to court or Family Dispute Resolution
- your lawyer can often help you with referrals to support services
- the law recognises the negative effect of domestic and family violence on children - this includes when children are exposed to domestic and family violence.



How do I get full custody of my children?

The term 'custody' is no longer used in Australia.

The law now talks about who a child lives with and how much time they spend with and communicate with the other parent.

The law also talks about how parents share making the big long-term decisions about children. This is called parental responsibility.



How much time should a child spend with each parent?

There is no exact formula about if or how much time children should spend with each parent. Every case is different.

It will depend on your own situation so you should get legal advice.



At what age can my child choose who they live with or what time they spend time with their other parent?

There is no set age when your children can choose who they live with or what time they spend with the other parent.

If the case ends up in court, your children's views are just one of many things the court looks at. The court will also consider if there has been any domestic and family violence.



Is it true we have to share care of the children 50:50?

No. The law does not say that children must spend equal amounts of time with each parent.

Every case is different, so it's important to get legal advice about your situation.

Can I go straight to court to get orders about the children?

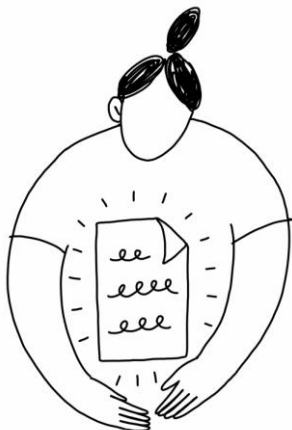
If you and the other parent can't agree on arrangements for your children, you should get legal advice.



Unless an exception applies, you must try Family Dispute Resolution (mediation) before you can go to the Family Courts about your children.

Domestic and family violence is an exception to trying Family Dispute Resolution, but sometimes going straight to court may not be the best option for you. Some people prefer to try Family Dispute Resolution even if there's been domestic or family violence.

If you're worried about your safety, steps can be taken to make Family Dispute Resolution safe. You can get legal advice about what is best for you.



I have experienced domestic and family violence – can the Family Courts make orders for my protection?

When the Family Courts make Parenting Orders, they can also order a Personal Protection Injunction. This can help protect you by ordering the other person not to do certain things. It is different to a Domestic Violence Order, so it's important to get legal advice about Personal Protection Injunctions and Domestic Violence Orders.

My ex-partner was violent towards me, but never hurt the children. Will this make a difference if our matter goes to court?

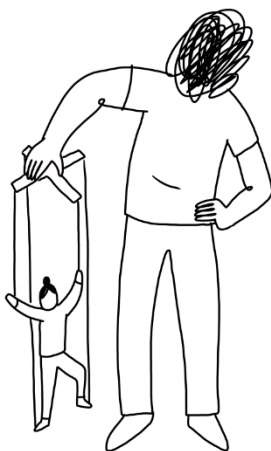


The Family Courts take domestic and family violence very seriously. Even if the violence was directed at you rather than your children, your children were still exposed to domestic and family violence.

If your children have been exposed to domestic and family violence, the Family Courts consider your children to be direct victims of the violence.

Research shows that being exposed to domestic and family violence can affect your children's emotional, psychological and physical wellbeing.

Someone says I used domestic and family violence – what will happen if my matter goes to court?



When the matter goes to court, the person who says you used domestic and family violence has to tell the court about their allegations.

Domestic and family violence also includes exposing a child to that violence. This is because of the negative affect it can have on your children's emotional, psychological and physical wellbeing.

You get a chance to respond and tell the court your side of the story. You also have a duty to tell the court about any domestic and family violence or Domestic Violence Orders.

At a final hearing, the court will weigh up all the evidence, and if possible, will try to decide if the domestic and family violence happened. This may affect the orders it makes.



Can I make arrangements for children when there's a Domestic Violence Order?

If you have experienced domestic and family violence and are thinking making arrangements for your children, it is important to get legal advice and consider how domestic and family violence affects children.

A Domestic Violence Order may affect your arrangements for your children. It will depend what your order says and on your situation so you should get legal advice.

If there's a Domestic Violence Order in place, parents may be able to:

- Do Family Dispute Resolution (mediation) to try to reach an agreement about the children. Some but not all people prefer to do mediation rather than go to court. In some cases you may need to change the Domestic Violence Order to go to mediation.
- Go to the Family Courts for Parenting Orders. You must give the Family Courts a copy of any Domestic Violence Orders and it is very important to tell the court about any domestic and family violence.



Each case is different, so if you have a Domestic Violence Order and want to know what you can do, get legal advice.

What happens when there are Parenting Orders before a Domestic Violence Order is made?



If you have experienced domestic and family violence and are thinking making arrangements for your children, it is important to get legal advice and consider how domestic and family violence affects children.

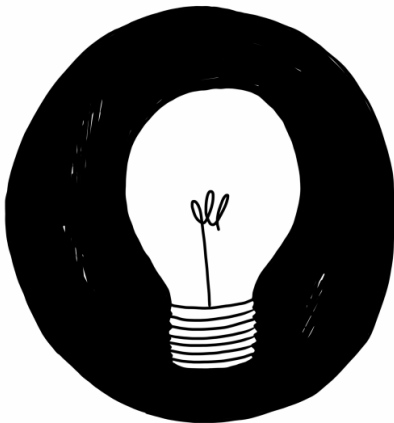
If you are in the Magistrates' Court or the Local Court for a Domestic Violence Order and there are already family law Parenting Orders in place, you must tell the court.



The Magistrates' Court or the Local Court can change or stop the Parenting Orders if they are not safe or if they would not work with the Domestic Violence Order. It's important to get legal advice about this.

If the court doesn't change the Parenting Order and those orders are not safe or don't work with the Domestic Violence Order, get legal advice. You may need to go back to the Family Courts.

Sometimes, the Family Courts may change or stop your Parenting Order. Or sometimes, the Family Courts can also make Parenting Orders that override parts of your Domestic Violence Order. The Family Courts think very carefully before doing either of these options. It will depend on your situation.



If there are differences between a Parenting Order and a Domestic Violence Order, the Parenting Order overrides the Domestic Violence Order to the extent of the difference.

However, it can depend on what your Domestic Violence Order says and on what your Parenting Order says, so it is important to get legal advice.

While we have tried to make the information here as up-to-date and accurate as possible, the law is complex and always changing. All legal problems are different. You should see a lawyer to get advice about your problem. Legal Aid NSW, National Legal Aid and the Commonwealth Attorney-General's Department are not liable for any errors or omissions, or for any loss or damage that arises from any person who relies on any information on this factsheet. This factsheet was developed in 2019.