

Parenting after leaving Domestic Violence

Your Rights and Responsibilities

What's in this Factsheet?

- Do I have to let my ex spend time with the kids?
- What if my ex has taken the kids?
- What are informal agreements, parenting plans, consent orders and parenting orders?
- What if I don't feel safe or comfortable negotiating an agreement directly with my ex?

We have just separated, and the kids are with me. Do I have to let my ex spend time with the kids?

If your ex wants to see the kids, but you have concerns about safety, seek urgent legal advice.

The safety of you and your children is of the highest importance. You should not agree to the other parent seeing the children if you believe it would be unsafe.

If both you and your ex want to spend time with the children, you can either:

- make an **informal agreement**, or
- make a **Parenting Plan**, or
- apply for **Consent Orders** to be approved, or
- apply for **Parenting Orders**

These options are explained below.

What if my ex has taken the kids?

If this has happened, you should get legal advice as soon as possible about applying for an urgent recovery order and parenting orders.

What is an informal agreement?

If both parents can agree about arrangements for the children, you can have an **informal agreement**, either verbally or in writing. However, this type of agreement is not enforceable (the court cannot make your ex stick to it).

If it is not safe for you to negotiate directly with your ex, ask a lawyer about other options.

What are Parenting Plans and Consent Orders?

If you can reach an agreement with the other parent, but you want something stronger than an informal agreement, you have two options:

- 1) a **Parenting Plan** - this is an agreement signed by both parents. But if a parent does not follow the agreement, it cannot be enforced in court.
- 2) **Consent Orders** - this is based on the agreement you reached with your ex, but consent orders are issued by a court. If either parent does not follow the orders, they can be penalised by the court.

You should seek legal advice before you sign a parenting plan or apply for consent orders.

Parenting plans or consent orders can cover things like:

- Which parent will the children live with. When and how they will spend time with and communicate with the other parent.
- Practical issues such as changeover, and how you and your ex will communicate.
- Any conditions on a parent's time with the children to ensure that the children are safe.

- How major decisions about the children will be made, for example about education, medical treatment or religion.

What are Parenting Orders?

If it is not possible, or safe, for you and your ex to reach an agreement about the kids, you can apply to the court for Parenting Orders. The court must make orders that are in the best interests of your children. In making its decision, the court takes into account a number of factors including family violence. You should get legal advice if considering a court application.

Best Interests of the Child

The *Family Law Act 1975* requires that the Best Interests of the Child is the most important consideration when making any orders about children. The best interests of the child should also guide parents when making agreements about their children.

What if I don't feel safe or comfortable negotiating an agreement directly with my ex?

In this situation you can try Family Dispute Resolution (FDR). A FDR provider does not take sides. They help you and your ex talk about what you want, to see if you can work out an agreement about the children. A number of organisations provide FDR including Family Relationship Centres and Legal Aid. See below for contact details.

However, if you do not feel safe attending FDR with your ex in the same room, or the same building, you should tell the FDR provider.

If you are going to court to seek Parenting Orders, you need a '60I certificate' from a FDR provider. Some situations where the FDR provider will give you this certificate are:

- both parents have attended mediation and made a genuine effort to reach an agreement, but still do not agree; OR
- where there has been, or there is a risk of family violence or child abuse; OR
- the other parent refuses to take part in mediation or cannot be contacted.

There are parenting orders in place. Do I have to follow them?

Under the law, both parents must do what the parenting orders say. If you do not follow the parenting order, the other parent can complain to the court - this is called bringing "contravention proceedings". In this situation, you will need to satisfy the court that you have a **reasonable excuse** for not complying with the parenting orders. Seek legal advice if you cannot comply with parenting orders or your child is at risk.

If there are parenting orders and you also have an AVO in place, you should seek legal advice.

Where can I get legal advice or further information?

Legal Aid provides free legal advice, and in some cases free representation to assist you through the whole process. Some community legal centres also give free advice about parenting issues.

Some private family law solicitors offer a free appointment and will work for a legal aid grant (check with them). If they think you are eligible, they will make an application for legal aid - if approved, this means that Legal Aid will pay the private solicitor to represent you.

Legal Aid NSW: www.legalaid.nsw.gov.au; Law Access 1300 888 829

Community Legal Centres: www.clcnsw.org.au; 02 92127333

Family Law Courts: www.familylawcourts.gov.au National Enquiry Line 1300 352 000.

Family Relationship Centres: www.familyrelationships.gov.au Family Relationships Advice line 1800 050 321