

Family Law: Children and COVID-19

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The following is information only as a general guide to the law and is not a substitute for legal advice. If you would like legal advice, please call the Women's Legal Centre on (02) 6257 4377.

Resolving family law matters can be stressful at the best of times, the coronavirus pandemic has made this especially challenging for many women.

Many have already experienced significant changes in their daily lives and increased stresses relating to separation, divorce and working out arrangements for children with a focus on their best interests.

Restrictions are being eased progressively, so it is important to access updated information about current restrictions if you are navigating the court system or parenting arrangements regarding your children. The Family Court website provides important information regarding children and Covid-19.

www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-parents/covid-parenting-hp

This factsheet provides general information only. Please contact us if you require specific advice relevant to your family law situation. If you have a solicitor acting, it is important to speak with your solicitor.

I have a family law matter in the Family Court/ Federal Circuit Court. Are the Courts still running?

The Family Court of Australia and Federal Circuit Court have provided guidance that, where possible, Court events are to take place by telephone or videoconferencing/ video link if the facilities exist.

Some current matters before Court may be adjourned to a later date.

There will be, in limited circumstances, a small number of face-to-face in-court hearings where social distancing requirements will be strictly followed.

Face-to-face interviews by family consultants will only take place in exceptional circumstances.

New matters can still be efiled with the Court and will be allocated a date as soon as possible. If you are self-representing and do not have access to electronic filing, contact the Family Court on 1300 352 000.

We expect further guidance from the court as any further changes take place.

I have parenting orders in place. Does COVID-19 affect these?

Court orders are legally binding and should be followed. Even under the current circumstances, you are still required to meet your obligations.

Situations may arise that make strict compliance with your current court orders difficult. If travel restrictions, quarantine or school closures mean your orders are no longer workable, you should try to reach an alternative solution. For example, if changeover usually occurs at a child's activity which is now cancelled, you will need to make alternative arrangements for changeover.

If it is safe to do so, you should communicate with the other party about how you can make the current court orders work. If you can't agree to vary the arrangement, or if it is unsafe to do so, and one or both parents or carers continue to have real concerns, you can make an application to the Federal Circuit Court or Family Court electronically and seek a variation of the orders. It is important to seek legal advice prior to any Application to the Court.

My children live part-time with me and part-time with my ex-partner. Are they still allowed to travel between homes?

Yes. Currently all states allow you to uphold current shared parental agreements. This means you can drive your children to their other parent or carer's residence, and they can visit your residence to pick children up.

What if I can't comply with the orders because of COVID-19?

Most importantly, if a parent wants to change parenting arrangements this should be done on the basis that the change is in the best interests of the children.

If requirements to self-isolate or travel restrictions mean it is simply not possible to comply with your orders, then one adjustment that could be made is to facilitate your child using technology to maintain contact with their other parent – Facetime, Zoom and Skype are a few options. If appropriate, you might also want to consider offering additional time at a point in the future when restrictions are eased, in lieu of time missed due to COVID-19 issues.

How can I change Parenting Plans and agreements?

If an agreement can be reached about new parenting arrangements, even if they are to be adjusted for a short period of time, this agreement should ideally be in writing. Writing can include email or text.

If you are unable to reach an agreement directly with the other party about parenting matters you should seek legal advice about your options such as mediation, Family Dispute Resolution, or in exceptional circumstances, an Application to the Federal Circuit Court of Australia or the Family Court of Australia in relation to parenting matters.

What happens if a parent breaches the parenting orders?

When a parent breaches the parenting orders, contravention proceedings may be commenced by an application to the Court. The contravening parent may raise a reasonable or lawful excuse to not comply with the orders. A reasonable excuse is when the person believed on reasonable grounds that their actions of non-compliance were necessary to protect the health or safety of a person, including themselves or the child. This contravention must only last the amount of time necessary to protect the health and safety of a person.

It may be possible for a parent who does not comply with orders to show that the circumstances relating to the COVID-19 virus amounted to a reasonable excuse to breach the orders. This will be determined on the individual circumstances.

The Courts are not going to accept COVID-19 alone as an excuse not to abide by orders.

What is the Covid-19 Court List?

In April 2020, the Family Court of Australia and Federal Circuit Court of Australia established a court list dedicated to urgent parenting-related disputes arising from the COVID-19 crisis, including those involving domestic and family violence. The COVID-19 List is designed to quickly identify and deal with cases that need urgent attention due to the COVID-19 crisis.

Eligible applications, especially those involving issues of risk and domestic violence, will receive immediate attention and be triaged by a dedicated Registrar. The Registrar will assess the needs of the case and allocate it to a Judge. The case will be heard by a Judge within 72 hours of being assessed. For more information about how to apply: www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-list/national-covid-list and contact the Centre for assistance.

**For more info or free legal advice, call us on 02 6257 4377, 9am-5pm, M-F
or email admin@womenslegalact.org**

Free Legal Advice

9am - 5pm

(02) 6257 4377

Speak with a Women's Legal Centre Lawyer for
free legal help with children, property,
employment and family violence issues.



<http://womenslegalact.org>

