

The effect of family violence orders on parenting orders

Date: Sunday January 21, 2024

Allegations of family violence are a regular occurrence in family law matters. Although they are separate issues, family violence, separation, and parenting arrangements often overlap. The Family Court has spent a long time trying to better understand family violence, the patterns of behaviour, and how to respond to it effectively. The Court will take into consideration any family violence orders to ensure it makes safe, reasonable, and effective parenting orders.

What is a family violence order?

The Family Law Act (the Act) defines 'family violence as:

> "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member) or causes the family member to be fearful."

A 'family violence order' means any Court order, including interim orders, made under a prescribed law of a State or Territory of Australia to protect a person from family violence. How family violence orders impact on parenting matters can be complex and stressful.

> ***NOTE**: Meillon and Bright **do not** provide services in relation to family violence orders (eg, applications, breaches etc), however, we can refer you to an appropriate firm with experience in this field.*

Across Australia, there are many variations of family violence orders, however, they share common intentions. No matter what State or Territory you are in, family violence orders are made by a Magistrate with the intention to protect someone from physical and mental harm. Family violence orders may be sought by the Police or through a private application by an affected party.

If you are seeking to apply for a family violence order, we can refer to you to an appropriate firm with experience in this field.

Often family violence orders are put in place to prevent physical violence. However, these orders can be issued even when there has been no physical violence. There may be other behaviours that warrant protection from, for example, sexual abuse, financial abuse, and stalking.

A family violence order sets certain conditions like:

not being able to go near a person, their property or their workplace;

not being able to contact a person by phone, text message, letter or email;

not use other people to contact a person;

not publish information about that person on the internet.

What are parenting orders?

Parenting orders are made by the Federal Circuit and Family Court of Australia, either by way of consent between the parties or by decision of a Judicial Officer.

Parenting orders set out the care arrangements for children, medical and education issues, and the communication between the parties. The orders can also cover things like where handover of the children is to take place or restrict significant others from having contact with the children.

Parenting orders are legally enforceable, which means if one party breaches the terms of the orders, the other party can file an enforcement or contravention application.

You can learn more about parenting orders in our blog, "Parenting orders for spending time with the children".

NEED HELP WITH PARENTING ORDERS? CALL 08 6245 0855

Family violence and parenting proceedings

The Act provides that, when dealing with parenting matters, the Court must be informed of any family violence order that has been made in relation to a party in the proceedings or a child of the proceedings. The Court must also ensure that any Order it makes is consistent with any family violence order that is in force. This is to ensure that a person is not subjected to an unacceptable and

avoidable risk of family violence.

While obtaining a family violence order does not automatically give a party the ‘advantage’ in family law parenting disputes, family violence allegations and related orders are a relevant factor in parenting matters.

The Court always assesses evidence that it deems to be relevant to a child’s welfare. When it tries to determine what is in the child’s best interests, the Court must always concurrently protect children from the physical or psychological harm of being subjected to, or exposed to, abuse, neglect or family violence.

Notably, family violence orders can sometimes allow contact between a defendant and their children pursuant to any parenting orders made by the Family Court or parenting plan agreed to at Family Dispute Resolution.

Sometimes the Court may make parenting orders that override family violence orders. The Court may do this to allow for the handover of children or to facilitate attendance at family counselling, Family Dispute Resolution, or any other Court event during the proceedings.

Importantly, if you are listed as the defendant on a family violence order, it is your responsibility to ensure you do not breach the order. As long as there is a family violence order in place, even if you disagree with the allegations, you must follow the conditions. Breaching a condition of a family violence order is treated as a criminal offence and can result in penalties such as imprisonment.

> ***NOTE**: We are able to assist you with your parenting dispute, including parenting orders and parenting plans, but we are **unable to assist you** with applications for family violence orders or a breach of the orders. For assistance with issues related to a family violence order, we are able to refer to you a firm with suitable expertise in this field.*

When a family violence order and parenting orders intersect

Where there has been a parenting order made prior to the making of a family violence order, State courts have the power to revive, vary, suspend or discharge the existing parenting order. The intention behind this is to enable the courts to create consistency between parenting orders and family violence orders.

With the new amendments to the Act coming into effect in May 2024, family violence orders are only going to become more relevant to parenting matters. If a parent is found to have engaged in family violence, they may have time with their children restricted and lose their parental responsibility to make decisions about their children’s future.

What is a family violence order called in my State/Territory?

Queensland: Domestic Violence Order

Victoria: Intervention Orders

Western Australia: Family Violence Restraining Order

South Australia: Intervention Orders

New South Wales: Apprehended Domestic Violence Order (ADVO)

Tasmania: Family Violence Order

Northern Territory and Australian Capital Territory: Domestic Violence Order

Get help from a family lawyer

Due to the complexities of each individual matter, there is no ‘one size fits all’ solution when looking at family violence issues and parenting matters.

It is crucial to approach these matters with great care and specialised legal expertise from a family lawyer experienced in parenting arrangements after separation and/or a criminal lawyer experienced in family violence orders.

We do not provide services related to family violence orders, however, we are able to refer you to a suitably qualified criminal lawyer.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.