

# When child protection laws and family law intersect

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In Australia, both family law and child protection laws aim to keep children safe from harm and support their wellbeing. However, they are handled by different courts, follow different procedures, and involve different agencies. When these two areas overlap, it can often create confusion for parents and carers.

This article explains how family law and child protection systems intersect, and what you need to know if you're involved in either.

## Key differences between family law and child protection law?

### Family law

Family law generally deals with disputes between private individuals (most often separating parents) about parenting arrangements, child support, and property settlement. The Family Court of Australia (now merged into the Federal Circuit and Family Court of Australia) and the Family Court of Western Australia (**"the Family Courts"**) manage these matters.

Key parenting disputes in the Family Courts include those related to:

- parenting arrangements (where a child lives and who they spend time with);

parental responsibility;

- family violence;
- child support.

### Child protection law

Child protection matters are managed by state and territory authorities such as the Department of Communities and Justice (NSW), Child Protection (WA), Child Safety Services (QLD), or the Department of Families, Fairness and Housing (VIC).

These agencies act when there are concerns that a child is exposed to family violence and/or is at risk of harm.

These departments may:

investigate reports of harm;

remove a child from their parents' (or carers') care;

apply to the Children's Court (in the respective state or territory) for protective orders.

## When do child protection and family law intersect?

Family law and child protection systems intersect when there are safety concerns (either the risk of violence or actual violence) about a child who is the subject of parenting orders or disputes.

This overlap can be complex, as each system has its own procedures and priorities. Sometimes, there can be confusion about which system should take the lead when they are both involved with the same family.

This often occurs when:

there are allegations of physical or sexual abuse;

a child has been exposed to family violence;

a parent has a serious mental illness that may impact the safety of the child;

- drug and/or alcohol abuse problems;

a child has already been removed by child protection authorities, but one parent seeks custody.

In such cases, both the Family Courts and the state or territory child protection systems may be involved at the same time.

## What happens if there are conflicting court orders?

It is not uncommon for one court to make orders that appear to contradict another. For example, a Family Court order might say the child should live with one parent, while a child protection order might say the child must remain in foster care.

When this happens:

child protection orders generally take priority in practice;

the Family Court may be asked to vary or suspend its orders;

both courts (Family Court and Children's Court) will act in the child's best interests, but cooperation between systems can vary.

## Can the Family Courts make decisions in child protection cases?

No. The Family Courts do not have the power to make child protection orders like removal or long-term guardianship orders. Only state and territory Children's Courts can do that.

However, the Family Court can:

request information from child protection agencies;

make parenting orders that take into account risk factors;

appoint an Independent Children's Lawyer (ICL) to represent the child's interests; and

in certain cases, formally request the relevant state or territory child protection authority intervene in family law proceedings.

# The role of child protection agencies in family law cases

Even though child protection authorities usually don’t participate in family law proceedings, they may:

- intervene or provide reports if requested by the Family Court;
- provide documents to support or refute allegations of harm;
- be subpoenaed to give evidence.

Recent initiatives, such as the co-location of child protection workers in family courtrooms, have improved information sharing between the two systems. This helps both courts and agencies make better decisions for children.

> **Tip**: If a child protection agency is already involved, its findings will be relevant to the outcome of a family law matter.

# What if a child is removed from a parent’s care?

If a child is removed by child protection authorities:

- the case will go to the Children’s Court in your state or territory;
- the court will assess whether the child is in need of protection;
- the goal is usually to reunite the child with their family, unless it is unsafe.

In the meantime:

- any family law proceedings may be paused;
- parents may still apply for parenting orders in the Family Courts later, depending on the outcome of the child protection case.

# Best interests of the child

Both systems are guided by the best interests of the child, but they apply this principle in slightly different ways:

The *Family Law Act 1975* (Cth) and the *Family Court Act 1997* (WA) list primary considerations such as the child's safety, the views expressed by the child, and the benefit of having a relationship with both parents.

State child protection legislation focuses on whether the child has suffered, or is likely to suffer, significant harm.

While the legal frameworks and thresholds differ, both systems ultimately prioritise children's safety and wellbeing above all else.

## Practical tips for parents navigating both systems

If you're involved in both family law and child protection matters:

**Get legal advice early**: These matters are complex and interlinked.

**Stay engaged**: Cooperate with child protection agencies and attend court dates.

**Focus on your child's safety and stability**: Both courts (Family Courts and Children's Courts) want to see that children are protected and supported.

**Communicate with any legal representatives**: Including Independent Children's Lawyers if appointed.

**Document everything**: Keep records of communications, case plans, and compliance with orders.

## Seek advice from a family lawyer

Navigating both family law and child protection systems can be stressful and confusing. While both aim to protect children, they operate under different rules and in different courts. Understanding how they intersect, and getting legal advice and assistance early, is essential to ensure that your child's rights and wellbeing remain front and centre.

If you are involved in a family law dispute and child protection is also involved, seek advice from a lawyer experienced in both areas. Every situation is different, and the right guidance can make a significant difference.

*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.*