

Parenting after leaving Domestic Violence

Leaving Domestic Violence



- 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 genuine concerns about their safety, seek urgent legal advice.

The safety of you and your child(ren) is of the highest importance. You should not agree to the other parent seeing the child(ren) if you believe it would be unsafe for them.

What if my ex has taken the kids?

If you and your ex want to work out an arrangement that outlines when you both get to see the child(ren), you can:

- 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?

You should seek legal advice as soon as possible, about applying for an urgent recovery order or applying for parenting orders. If you're worried that your child(ren) is at risk, and your ex poses a serious risk to their safety - call SAPOL urgently and ask them to conduct a welfare check. Make sure you give them your current contact details.

What is an informal agreement?

If both parents can agree about arrangements for the child(ren), you can create an informal agreement, either verbally or in writing. Keep in mind that this type of agreement is not enforceable (the court cannot make either parent follow it).

What are parenting plans and consent orders?

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

- 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.
- Consent Orders: This is based on the agreement you signed with your ex, but consent orders are issued by the 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 the child(ren) will live with
- When and how they will spend time with and communicate with the other parent
- Changeover, and how you and your ex will communicate
- Any conditions about a parent's time with the child(ren) to ensure child(ren) safety
- How major decisions about the child(ren) will be made (i.e. school, medical treatment, 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 interest of your child(ren). In making its decision, the court takes into account a number of factors including family violence, but not limited to. 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 the child(ren). The best interests of the child should also guide parents when making agreements about their child(ren).

What are parenting plans and consent orders?

In this situation you can try Family Dispute Resolution (FDR). An FDR practitioner does not take sides. They help you and your ex negotiate and work towards an agreement about the child(ren). A number of organisations provide FDR, including Relationships Australia and Legal Aid. Contact details provided below.

If you don't feel safe attending FDR with your ex in the same room or building, you should tell the FDR practitioner. If you have an Intervention Order against your ex, it is possible to conduct FDR via telephone conference.

If you are going to court to seek parenting orders, you need a '60I certificate' from an FDR practitioner. Some situations where the FDR practitioner will give you this certificate are:

- When 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 family law, both parents must follow the Parenting Orders. If you do not follow the parenting orders, the other parent could initiate another court proceeding and file a contravention order. In this case you will need to satisfy to the Court that you have reasonable excuse for not complying with the Parenting Orders. Seek legal advice if you cannot comply with the Parenting Orders, or if your child is at risk. If there are Parenting Orders and you have an Intervention Order in place, you should seek legal advice.

Where can I get legal advice, or further information?

Community Legal Centres SA can help you locate a community legal centre near you, for free or subsidised legal advice. The Legal Services Commission of SA provides free legal advice on a range of family law matters. Legal Aid funding can either subsidise costs or cover all costs of the legal process, if you are eligible. Some private family law solicitors offer a free appointment and will work for a Legal Aid grant (you will need to check with them first). If you are eligible, they will make an application for Legal Aid - if you are approved, Legal Aid will pay the private solicitor to represent you. However, you may be required to pay a small fee upfront. The Legal Services Commission SA provide more information on the conditions of Legal Aid.

Find your nearest Community Legal Centre: www.clcsa.org.au

Legal Services Commission of SA: 1300 366 424 or (08) 8463 3555

Women's Legal Services (SA) Inc: 1800 816 349 or (08) 8221 5553

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

Family Relationships Advice Line: 1800 050 321 or www.familyrelationships.gov.au

