

Children: Family Violence and the Law

The Family Law Act, Family Violence Protection Act 2008 and recent amendments expanding the definitions of Family Violence and Child Abuse send a strong message that Family Violence will not be tolerated under any circumstances.

Courts dealing with family law matters must take into account any incidence of violence involving (or a family violence order applying to) the child or a member of the child's family. This is to protect the child from future violence and abuse.

What is Family Violence?

Family Violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful. Some examples of behaviour that may constitute Family Violence include:

- Physical or verbal assault
- a sexual assault or other sexually abusive behaviour
- stalking
- repeated derogatory taunts
- intentionally damaging or destroying property
- intentionally causing death or injury to an animal
- unreasonably denying a family member the financial autonomy that he or she would otherwise have had
- preventing a family member from making or keeping connections with his or her family, friends or culture

Protection from Family Violence

The Family Law Act states that protecting children from physical or psychological harm, from being subjected to or exposed to abuse, neglect or family violence is a primary principle when a court considers the best interest of the child/ren. This means that children must be protected, not only from the direct harm of violence, but also from harm that results when they are exposed to family violence perpetrated against other family members. This is now a top priority when a court is determining what is in the children's best interests.

Family Dispute Resolution

Family Dispute Resolution practitioners screen for family violence. At Better Place Australia all clients are seen separately for an assessment prior to making a decision about whether to proceed with FDR.

The Practitioner may make a decision not to proceed with FDR for safety reasons, even if the client wishes to proceed. Victims of family violence will always be referred to other agencies and legal practitioners who can advocate on their behalf and/or provide the necessary supports.

If appropriate, and safety considerations have been addressed, shuttle mediation sessions can be arranged where the parents are seen in separate rooms. In cases where there has been violence or child abuse, separating parents are not required to attend Family Dispute Resolution.

Does Shared Parental Responsibility apply where there is Violence?

This does not apply if there has been violence or child abuse or there is risk of it happening. In these circumstances, the court is not obliged to consider the parents sharing responsibility.

Equal or Substantial Time

In cases where there has been family violence or child abuse, or there is a risk of it, the court is not obliged to consider a child spending equal time or substantial time with both parents.

Children, the Courts and Family Violence

Where there are allegations of family violence, a court must consider this when deciding what is in the child's best interests. The court is required to act without delay in these cases.

The court must also consider the need to protect a child from direct or indirect exposure to abuse or ill treatment. The court balances the need to protect children and their parents from violence or abuse, with the children's right to know and spend time with their parents.

More attention is given to the protection of children from family violence, when a court is determining what is in the child's best interests.

Family Violence Orders

Family Violence Orders are under state legislation to help protect a person from family violence. In Victoria, they are known as Family Violence Intervention Orders. These orders may require a person not to have contact with or threaten another family member and may impose other restrictions on that person.

Also, police have been given the power to issue "Family Violence Safety Notices" in urgent cases. Such a notice may impose a number of restrictions on a person similar to a Family Violence Intervention Order, which can include a condition excluding a person from a family member's residence.

Breaking a Family Violence Intervention Order can lead to criminal charges.

The Family Court and Family Violence Orders

The Family Court usually makes parenting orders that are consistent with any existing State Court family violence order. A parenting order of the Family Court would not involve an unacceptable risk of family violence. The Family Court decision will be made in the child's best interest, and safeguards may be included in a parenting order.

Inconsistent Orders

If it is in the best interest of the child, the Family Court can make a Parenting Order that is inconsistent with an existing State Court family violence order. A Magistrate can also make a Family Violence Intervention Order and at the same time suspend, vary or discharge an existing Family Court Parenting Order.

The best interests of the child are a relevant consideration but not exclusively so and the interests of the party to be protected against violence must also be taken into account.

Family Court of Australia

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/>

For confidential support and information please call the Safe Steps 24/7 family violence response line **1800 015 188**.

Interpreters



You can ask us for an interpreter in your language.

What do I do now?

If you feel your situation would benefit from Family Dispute Resolution or you would just like to know more, please call **1800 639 523** or send an email to enquiry@betterplace.com.au with your contact details.

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Further Information
