

COVID-19: I already have parenting orders: what happens now?

FACTSHEET

This factsheet is part of a series from Legal Aid NSW that aims to help answer your questions about COVID-19 and family law.

You may be worried or confused about how COVID-19 will affect you and your family. Sometimes a crisis can make legal problems worse or new problems might develop. Legal Aid NSW understands that there will be a lot of questions about family law issues, parenting and staying safe. This series of fact sheets will give you helpful information and contacts to support you and your family to manage all the changes that are happening in our community.

How does COVID-19 affect my family?

The COVID-19 pandemic may mean that existing court orders about care arrangements for children are no longer practical or in the best interests of children.

Families' safety and wellbeing are the most important considerations. It may not be possible for you and your ex-partner to agree on parenting arrangements, especially if either of you has concerns for your safety or the safety of the children. If you are feeling worried about, or are experiencing, violence, you should view [our factsheet about domestic and family violence](#). You should also speak to a lawyer about your situation.

The family law courts have made changes to the way they operate during this pandemic. You can view our [factsheet about recent changes to court processes](#). You can also read answers to frequently asked questions that have been published by the [Family Court of Australia](#) and the [Federal Circuit Court of Australia](#).

Are my parenting orders still in force?

Court orders you already have are still in force. However, during this pandemic, situations might come up that make it very hard to follow the orders. For example a child might have to go into self-isolation or the orders might be about pickups from school but that school is now closed.

If it is safe to do so, you should talk to the other parent to try to find a solution. If orders can't be followed, you should try to follow the spirit of the orders and make sure that any alternative arrangements are in the best interests of your children.

Do I need to go to court to change the orders?

If you need to change your court orders temporarily and you are able to reach an agreement with the other parent about how to do this, you don't need to go to court to have the orders changed.

You only need to follow the agreement you have reached with the other parent. Counselling or mediation services may help if you are having trouble reaching an agreement.

Do I need a parenting plan?

Parents can make a formal agreement, this is called a parenting plan.

A parenting plan can change existing parenting orders if it becomes impossible to follow the orders. A parenting plan:

COVID-19: I already have parenting orders: what happens now?

FACTSHEET

- Must be in writing, signed and dated. If you can't sign it, then you should agree by email, text message, WhatsApp or other written electronic means.
- Can be changed by another signed written agreement.
- Can also have an end date. For example, you might agree on a parenting plan that will be in place until the COVID-19 pandemic has ends, or until a self-isolating parent no longer needs to self-isolate.
- You can see an [example of a parenting plan](#) online.

Some ideas on how you might be able to change your court orders during the pandemic are provided below.

What if I need to self-isolate?

Self-isolation means staying at home to avoid spreading the virus that causes COVID-19. It is sometimes called self-quarantine. There are some people who must self-isolate, including people who have COVID-19, people who have been in close contact with someone who has COVID-19, and people who have recently arrived in Australia. The Australian Government has published [information online about who must self-isolate and what self-isolation means](#).

If you or your children have been asked to self-isolate, you should

- Give the children's other parent the instructions provided to you in writing to as soon as you can.
- Get medical advice in writing to send to the other parent as soon as you can or ask the doctor to speak to the other parent over the telephone.
- Contact the other parent by text message, WhatsApp or email so that you have a written record of your agreement and the information you gave the other parent.
- Take photos of a medical certificate with your phone and send it in a text message or email.
- Tell the other parent when you expect the period of self-isolation to end.

Remember, you cannot force the other parent to look after your children. It is best to make alternative plans now and think about other people you trust to look after your children if their other parent is unable or unwilling to. This will help make any sudden necessary change in arrangements as smooth as possible for your children.

If the other parent won't let the children see you after any required self-isolation period ends, then you should try counselling or mediation, also known as family dispute resolution, if possible. You can [view our factsheet about mediation](#).

What if the other parent is in self-isolation?

If the other parent needs to self-isolate, and the children are with you, the children should remain with you for as long as the other parent remains in self-isolation.

You should:

- Try to be as flexible and reasonable as possible when making new arrangements.
- Try to help children maintain contact with their other family members by telephone, video or FaceTime chats or email, during any period of self-isolation.

COVID-19: I already have parenting orders: what happens now?

FACTSHEET

- You may want to consider arranging “make-up time” for when the period of self-isolation is over.

What if we have court orders for supervised time?

Your court orders might say the children’s time with a parent has to be supervised at a contact centre, or by family or friends.

If your usual contact centre is closed, and it is safe to do so, you can try talking to the other parent to make other arrangements. For example, you and the other parent might agree that during the pandemic a trusted family or friend will supervise visits. If you are currently involved in court proceedings and there is an independent children’s lawyer for your children, contact them. You should also get legal advice.

If family or friends are supervising visits, it’s a good idea to talk to the other parent about a back-up plan. This may be more important where the person who usually supervises is a grandparent or other older relative or friend who may be especially vulnerable to COVID-19.

Your court orders might say that pick-ups and drop-offs should happen at a particular public place, like a fast food restaurant or indoor play centre. For some families, it might not be possible to follow the court orders because these services or businesses are closed during the pandemic. If it is safe to do so, you should discuss with the other parent whether there is another public place that will be safe for both parents and children. For example, if your children are old enough, you may be able to drop them off or pick them up from the front of the other parent’s house or meet at a park.

You may want pick-ups and drop-offs to happen at a place where there are CCTV cameras. CCTV cameras are often found outside train stations and at certain other locations. For example, the City of Sydney has produced [a list of public places where CCTV cameras are installed](#).

What if the border is closed and the children usually live across the border?

Some states and territories have made new rules about who can cross their borders. You might be able to travel across borders if you are following a court order. The rules are different across the states and territories. If you need to cross the border, consider these things:

- Check with police before trying to cross a border.
- Show a copy of your court orders and a certified copy of the driver’s licence of the other parent, or something else that shows where the other parent lives.
- Keep photo identification with you.
- Have the other parent available by telephone in case they need to be contacted by police.
- Keep in mind that it might take a lot longer than usual to cross state or territory borders during the pandemic.
- Get legal advice before trying to cross a border.

You might find that you, or the other parent, cannot cross the border. Parents need to be as flexible as possible in these circumstances. If the children are with you, try to arrange for them to stay in touch with the other parent by telephone, video or FaceTime chats, or email. You may also want to consider arranging “make-up time” for the other parent once border travel becomes possible again.

COVID-19: I already have parenting orders: what happens now?

FACTSHEET

What if the other parent has not followed the court orders, and I didn't agree?

When one parent does not follow court orders without the agreement of the other parent, a court can impose penalties on them. However, the court might decide that the parent had a reasonable excuse for breaking an order. A reasonable excuse might be protecting the health or safety of the children, or someone else's health or safety. For example, if your court orders say that the children should visit you on weekends, but you are in self-isolation because you have been exposed to COVID-19, a court may decide it is reasonable for the other parent not to bring the children to visit you until the self-isolation period is over.

Going to court to make the other parent follow court orders should be a last option. This is especially true if the other parent has not followed the court orders because they are trying to keep the children healthy and safe. All parents should try to be as flexible and sensible as possible and focus on their children's best interests.

What if we can't agree on how to change the court orders?

If you or the other parent cannot follow your court orders because of the pandemic, and you cannot agree with the other parent on new parenting arrangements, you should keep your children safe until the dispute is resolved. If the children are with you, you might still want to help them stay in touch with the other parent by telephone, video or FaceTime chats, or email.

You might need to consider making an application to the court to change your orders. Usually, the court will not be able to deal with an application to change parenting orders unless you have already tried mediation, also called family dispute resolution, and the mediator has given you a certificate. You do not need a certificate in some circumstances, such as when the orders you are trying to change are less than a year old, your matter is urgent, or family violence or child abuse has occurred, or is at risk of occurring.

Because of COVID-19, court services are limited. Family law courts are prioritising the most urgent cases. You should get legal advice if you are thinking about making a court application. You can [view our resource kit, "My ex-partner isn't following the court orders about our children. What can I do?"](#) to learn more.

How can I get help?

For free legal help call 1300 888 529 or [call your local Legal Aid NSW office](#). You can contact the Legal Aid NSW Family Dispute Resolution Service by calling (02) 9219 5118 or (02) 9219 5119.

If you need an interpreter, call the Translating and Interpreting Service on 131 450 and ask for LawAccess NSW. If you find it hard to hear or speak, call the National Relay Service on 133 677 and ask for LawAccess NSW or visit www.relayservice.gov.au.

The Family Relationship Advice Line is a national telephone service that helps families affected by relationship or separation issues. You can call the Family Relationship Advice Line on 1800 050 321.

This factsheet is intended as a general guide to the law. Do not rely on this information as legal advice. We recommend you talk to a lawyer about your situation. This information is correct at the time of writing, however, it may change.

CVFAM09 | 7 April 2020 | © Legal Aid NSW