



LGBTIQ Domestic & Family Violence and Family Law

This fact sheet is for lesbian, gay, bisexual, trans*, intersex and queer (LGBTIQ) people who are experiencing or have experienced domestic or family violence. It provides information about family law issues that may arise when there has been domestic or family violence.

In the LGBTIQ community there is a diverse array of intimate partner and family relationships including same sex and heterosexual de facto relationships, polyamorous and open relationships, and heterosexual marriages. There may or may not be children of these relationships.

Most family law issues are covered by the *Family Law Act 1975* (Cth). If you and your partner are married or in a de facto relationship, the Act will cover any disagreements you might have about your children or property. Even if you are not married or in a de facto relationship, the Act will apply if you are both the parents of a child and there are disagreements regarding parenting. Family law matters are usually dealt with by the Family Law Courts (the Family Court of Australia and the Federal Circuit Court).

CHILDREN

Am I a legal parent?

Whether or not you can apply to the Family Law Courts for parenting orders may depend on whether you are the child's legal parent:

- If you were in a de facto relationship with the birth mother when the child was born through donor insemination, you are the child's legal parent.
- If you are in an LGBTIQ relationship and you have arranged for a child to be born via surrogacy, you and your partner will not initially be the child's legal parents.
- If you entered into an altruistic surrogacy arrangement, you will need to apply to the Supreme Court of NSW for a parentage order to confer the status of parent upon you.
- If you entered into an overseas commercial surrogacy arrangement, the only mechanism available is to apply to the Family Court for a parenting order conferring parental responsibility upon you. This will not make you a legal parent in commercial arrangements. Please note that it is an offence for New South Wales residents to enter into overseas commercial surrogacy arrangements.

Being a legal parent means that when you cannot agree with the other legal parent about arrangements for your child, you can apply to the Family Law Courts for parenting orders. If you are not a child's legal parent, you may still be able to make an application for parenting orders if you have a concern for the 'care, welfare or development of the child'.

What are parenting orders?

A parenting order sets out parenting arrangements for your children. A court can make a parenting order based on an agreement between you and your ex-partner (Consent Orders), or the Family Law Courts can make orders following a hearing.

A parenting order may or may not provide that you and your ex-partner have equal shared parental responsibility for your children. An order may specify where your children will live; the amount of time the children will spend with you, their other parent or other people; and financial arrangements for your children.

Prior to making an application for parenting orders from a court, parents are generally required to participate in a form of mediation called Family Dispute Resolution. However, you will not need to go through this process if the court is satisfied there are reasonable grounds to believe there has been or is a risk of abuse or domestic or family violence.

Each person affected by a parenting order must comply with it, and there can be consequences for failing to do so. If you believe another person is not complying with a parenting order, you should seek legal advice or notify the court by making a contravention application.

Will the court take into account the domestic or family violence when making parenting orders?

The Family Law Courts have a special responsibility to protect children from domestic or family violence and its effects. When making decisions about children, including parenting orders, a court must weigh up two main considerations:

- The benefit to children of a meaningful relationship with both parents.
- The need to protect children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.



It is important that you tell your lawyer or the court about any violence you have experienced so that the court can take this into account. You should tell the court about any Apprehended Domestic Violence Orders (ADVOs), domestic violence charges and other court orders relating to your family.

If you have an ADVO, the parenting orders a court makes will not necessarily be consistent with the ADVO. Where they are inconsistent, the orders will modify your ADVO and the court must explain the changes to you. If violence occurs in circumstances provided for under parenting orders (e.g. while handing children over), you can apply for the orders to be changed. You should also call 000 immediately to report the incident to the police.

Can I receive child support payments?

Child support is money paid by one parent to the other. All legal parents may have an obligation to pay child support, regardless of whether they were married, in a de facto relationship, never lived together or never had a relationship.

Lesbian couples or couples where one parent is the birth parent, will be liable for payment of child support for one another as both will be deemed to be legal parents.

As for gay male couples or LGBTIQ couples who have children through an altruistic arrangement, it is not certain whether upon separation a child support assessment will be made by the Child Support Agency.

As for gay male couples or LGBTIQ couples who have children through commercial surrogacy arrangements, upon separation, they will not be entitled to seek a child support assessment through the Child Support Agency.

If you believe you should be receiving child support from your ex-partner, you can make an application to the Child Support Agency.

PROPERTY

Can I stay living in my home and have the perpetrator removed?

Generally, both you and your ex-partner are entitled to live in your home after you separate. However, you can apply for an exclusion order as part of an application for an ADVO to exclude the perpetrator from the family home.

If there is violence or you fear violence, it may be possible to obtain a sole occupancy order without getting an ADVO. This order will mean that you can live in the house without the perpetrator until the property is divided. In making an order, a court will consider the needs of both parties and any children.

If you want to apply for an exclusion order or sole occupancy order, you should obtain legal advice. See the 'For More Information' section below.

What is property?

Property includes the family home, any other real estate, cash in bank accounts, cars and other vehicles, investments and superannuation entitlements. It includes household items, jewellery and tools.

How can I arrange a property settlement?

The same laws regarding settling (dividing) property apply to ex-partners who were married and those who were in a de facto relationship. If you were in a de facto relationship that lasted at least two years or you had a child together, you can make an application for a property settlement under the *Family Law Act*. You have two years from the date of separation to make an application to the court regarding your property settlement. If you were married and you have divorced you have twelve months from the date of the divorce to make an application to the court regarding your property settlement. It is a good idea to seek legal advice about property law settlements.

It is sometimes a good idea to engage a solicitor to assist with your property law matter especially if you have experienced domestic or family violence. Lawyers generally seek to resolve property issues through negotiation or alternative dispute resolution rather than applying to the Court for property settlement orders at first instance. A general exception to this includes if there is some urgency or if there has been domestic or family violence such that alternate dispute resolution processes are not suitable.

If you are worried that your partner may sell or give away property without telling you, a court can make an urgent order to stop this happening until a final decision is made about your property. You should seek legal advice if you would like to make an application.

FOR MORE INFORMATION

The Safe Relationships Project (SRP) - Inner City Legal Centre

The SRP is a state-wide domestic and family violence court support and legal advice service for LGBTIQ people.

www.iclc.org.au/srp/

T: (02) 9332 1966 or 1800 244 481

E: srp@iclc.org.au

Inner City Legal Centre

LGBTIQ Family Law Evening Advice sessions every Wednesday 6pm to 8pm. Free confidential legal advice by appointment.

T: (02) 9332 1966

www.iclc.org.au



Women's Legal Services NSW

Free confidential legal information, advice and referrals for women in NSW with a focus on family law, domestic violence, sexual assault and discrimination.

T: (02) 8745 6988 or 1800 801 501

Monday and Thursday 9:30am-12:30pm, Tuesday 1:30pm-4:30pm

www.womenslegalsnw.asn.au/wlsnsw/

Family Advocacy and Support Services (FASS)

FASS is a specialist family violence service that provides legal and social services to clients affected by family violence in the family law courts.

Clients can attend the Family Law Courts registry and ask to see the duty lawyer or support worker at:

Parramatta: Level 2, 1-3 George St Parramatta

Sydney: Level 4, 97-99 Goulburn Street, Sydney

Newcastle: Level 4, 61 Bolton Street, Newcastle

Wollongong: Level 1, 43 Burelli Street, Wollongong

For legal assistance- Monday-Friday, 9:30am- 1pm and 2pm- 4:00pm. No appointment required

For social support:

Female clients: Monday- Friday 9:30am-1pm and 2pm- 4:00pm. No appointment required

Parramatta: 0478 825 759

Sydney: 0431 253 289

Newcastle: 0428 568 207

Wollongong: 0411 103 471

Male clients: no appointment required. Referrals can be made at all times on 1300 003 277 via a message bank or by the emails set out below

Parramatta: fassparramatta@ransw.org.au

Wednesdays, 9:30pm- 1Pm and 2pm- 4:00pm

Sydney: fasssydney@ransw.org.au

Mondays, 9:30am- 1pm and 2pm- 4:00pm

Newcastle: fassnewcastle@ransw.org.au

Mondays, 9:30pm-1pm and 2pm-4:00pm

Wollongong: fasswollongong@ransw.org.au

Tuesdays, 9:30am-1pm

This information is current to 26 September 2018 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on (02) 9332 1966

