

COVID-19 & Co-Parenting Arrangements Frequently Asked Questions

6 April 2020

1. How do the new laws about restrictions on movements impact my co-parenting arrangements?

The restrictions on movements in force in New South Wales do not prevent children moving between parents' households to visit parents or siblings. For parents with parenting orders in place, complying with Court Orders represents fulfilling a legal obligation and is a "reasonable excuse" for leaving home and for a gathering of more than two people.

For example, if you are effecting changeover with the other parent and/or a third party, you may both be present at changeover as well as the child/ren concerned.

2. What if our set changeover location is temporarily shut?

It is common for changeover locations to include schools, playcentres, sporting activities or at public areas such as parks or restaurants. In most instances, despite a changeover location being temporarily shut, changeover can still occur at the location.

There may be a number of instances where the current changeover location may be impractical. If it is safe to do so, engage in a discussion with the other parent and start planning for another neutral and public location that is practical for both parties, even if it requires some compromise.

If you cannot talk to the other parent, communicate with a third party, through your solicitors or a family dispute resolution service to work out a solution.

Most importantly, take the opportunity to co-parent during this challenging time and come up with sensible and reasonable solutions. Be sure to observe social distancing practices during changeover.

3. What if the other parent lives interstate?

The closure of some state borders will impact compliance for parenting orders requiring a child or a parent to travel interstate.

The Family Courts have stated they are working with the state and territory authorities to introduce exemptions in relation to movement across borders. Until interstate travel for the purposes of spending time with a child, sibling or parent living in another household has been clarified, interstate travel is not recommended. Currently, such travel is not classified as "essential movement", even if parties are bound by existing Court Orders.

It is important for parents who find themselves in this situation to show compassion towards the other parent and use their best endeavours to facilitate contact through other means, including through FaceTime, Skype, WhatsApp, social media or if videocall options are not available through regular telephone contact.

It is also reasonable for parents to discuss and agree to make up time in the future.

4. What if contact is supervised by a third party or occurs at a contact centre?

Parents who are supervised by third parties should make contact with the third party with enough notice to ensure that they can continue to facilitate supervised contact with a child during COVID-19. If the supervisor has concerns for their health and safety during this time, it may be impractical for the supervised time to continue.

If a contact centre is closed, it will be impractical for supervised time to continue even if there are existing Court Orders in place.

If such situations eventuate, and the affected parent is not permitted to contact the other parent, it is strongly recommended that they seek independent legal advice or engage a family dispute resolution service to assist with negotiating an alternate contact arrangement.

It is reasonable to request staggered make up time for when the self-isolation period is over and for alternate contact arrangements to take place in the interim, for instance via videocall or regular telephone contact, if it is safe to do so.

5. What about school holiday travel plans?

The state and overseas travel bans in force should be observed and any travel plans scheduled for the Term 1 school holidays ought to be cancelled or changed to a later date.

Whilst changing or cancelling travel plans that were planned months in advance is distressing and disappointing, it is important to stay positive when engaging with children in relation to these issues.

6. My co-parent and I have agreed to changes to our existing parenting arrangements. What should we do now?

Parents who agree to change parenting arrangements, even temporarily, should record the changes in writing. This does not necessarily mean by formal correspondence; an email for more detailed amendments or a text message for minor amendments should suffice.

This will prevent any misunderstanding between the parents prior to changeover or contact and minimise any distress for the child, the parents or third parties involved. For parents with current Court proceedings on foot, this will also assist the Court to understand the arrangement made and serve to avoid allegations of non-compliance with Court Orders in the future.

If an agreement has been reached through a family dispute resolution service or through solicitors, and consent orders have been developed to vary existing parenting orders, the agreement can be formalised through an Application for Consent Orders and filed electronically with the Family Courts.

7. What if I cannot come to an agreement for changes to existing parenting arrangements with the other parent?

Parents should ensure that the purpose or spirit of any existing Court Orders is respected when considering altered arrangements. The current health pandemic should not be taken as an opportunity to cut the other parent out or to spend longer periods of time with a child. The paramount consideration for parents must remain the best interests of the child which includes maintaining the child's relationship with each parent and sibling/s.

For parents who have concerns related to health and safety for the child, it is important to set out their concerns to the other parent in writing (such as email), together with practical discussion points so that you can engage in a reasonable conversation with the other parent.

If after reasonable attempts, an agreement cannot be reached, parents must prioritise keeping the child safe until the dispute can be resolved and provide contact with the other parent through other means such as videocalls, social media or telephone calls.

For the parents affected by non-compliance, it is strongly recommended they obtain independent legal advice or engage a family dispute resolution service as soon as possible to begin discussions with the other parent about restoration of contact or time with the child.

8. What if my child and/or I are required to be quarantined or to self-isolate?

Parents should immediately inform the other parent in writing if they are required to be quarantined or to self-isolate. In this communication, it is also sensible to set out a proposal for the other parent to have contact with the child during the period of isolation.

The NSW Government has issued orders under the Public Health Act 2010 (NSW) which makes it an offence punishable by 6 months prison and/or a fine of up to \$11,000 for overseas travellers entering NSW who fail to self-quarantine for 14 days.

9. What can happen if I do not comply with my existing parenting orders?

If a parent is considering breaching existing parenting orders, they should strongly consider obtaining independent legal advice. Non-compliance with parenting orders can result in the other parent filing a contravention application with the Family Courts.

Filing a contravention application does require filing a certificate from a family dispute resolution practitioner or an Affidavit for non-filing of a family dispute resolution certificate. If an exemption

to attending family dispute resolution exists, for example due to family violence, the other parent may not be on notice that a contravention application may be filed.

If a contravention application is filed, the Court can accept reasonable excuses for contravention of Court Orders on the following grounds:

- That the person believed on reasonable grounds that their actions causing the contravention were necessary to protect the health or safety of a person, including themselves or the child; and
- The contravention did not last longer than was necessary for that purpose.

Whilst it might seem reasonable to assume that the circumstances surrounding COVID-19 will satisfy the Court's "reasonable excuse" requirement, it is important to remember that each case is determined by its individual merits and that withholding a child from another parent is taken very seriously by the Family Courts.

The parent with no contact during this time, should ensure they keep accurate records of the dates and times when contact did not occur and request make up time in the future.

10. How are the Family Courts operating during this time?

The Family Court of Australia and the Federal Circuit Court of Australia have introduced new policies and made adjustments to their operations in the face of public health and safety concerns.

The Court is conducting all directions hearings and mentions over the phone unless there are compelling reasons to appear at Court in person.

Child Dispute Conferences are taking place over the phone. Family report interviews are proceeding as scheduled unless parties are advised otherwise by their family report writer.

In terms of trials, urgent and priority trials dealing with parenting matters or family violence remain listed and will be conducted by the Courts in the safest manner possible. Where practical, the Court is using telecommunications during hearings. Limited face to face trials are being conducted, with the restriction that no more than 8 people can be in a Court room at any one time.

It is possible that trials concerning property only or non-urgent parenting trials will be adjourned at the discretion of the judge.

The Courts have also introduced new policies requiring electronic filing of Court documents, with an exception for self-represented litigants who may post their documents to registries for filing.

11. Most importantly, stay mindful and engaged with children during this challenging time.

During this pandemic it is important to remain mindful that children can sense anxiety from their parents and loved ones. It is important to keep positive and provide reassurance to children, who may feel helpless for their parents who are facing difficult times, with job loss, reduced incomes

and difficulties in meeting financial obligations. Children have their own challenges in processing the myriad of information they are receiving from school, the news or their friends. Stay connected by checking in with your children's thoughts and feelings and remember to embrace joyful moments in each day.

Further information

If you require legal advice in relation to your parenting matters, please visit www.mlc.org.au/contact and send us a web enquiry.

For family dispute resolution services, please contact Family Relationship Centres. Please visit www.relationships.org.au to find contact details for your nearest centre.