



## Does a protection order prevent me from seeing my children?

**Date: Friday April 2, 2021**

In Queensland, protection orders are made under the *Domestic and Family Violence Protection Act (2012)*. A protection order is a document issued by a court that orders a person to stop threats or acts of domestic violence. It does not automatically prevent you from seeing your children. However, there can be situations/circumstances where the making of a protection order against you (i.e. naming you as the respondent) may affect your contact and communication with your children. These include:

- whether there are any interim or final parenting orders already in place;
- the specific wording of the protection order;
- the level of [alleged domestic violence](#); and
- whether the Magistrates Court made a finding that domestic violence had occurred (generally at a defended hearing where the evidence is considered).

### Where there are no parenting orders in place

Where there are no interim/final parenting orders made under the *Family Law Act (1975)* and the children live with the aggrieved (the person who makes the application for a protection order), the parent who is the named respondent in the protection order can have contact and communication to their children limited or effectively denied whether or not there is a risk of child abuse or harm to the children.

Therefore, we often advise our clients to obtain [parenting orders rather than a parenting plan](#) to prevent an aggrieved parent from withholding the children.

# What happens if a protection order is breached?

The parent who is subject to prohibitions in a protection order is limited in what they can do with respect to having contact with their children. They must take due care not to breach any conditions of the protection order as doing so could result in subsequent charges of a criminal nature and possibly a criminal conviction for breach of the protection order.

The most common condition breached is the condition that the respondent be of good behaviour and not commit any acts of domestic violence against the aggrieved or named person. The definition of domestic violence is somewhat broad and can include harassing behaviour, [financial abuse](#), threats to commit suicide and so on. We have covered what behaviour could potentially be considered domestic violence in our previous blog, "[Types of domestic violence](#)".

However, it can also be a breach simply to contact the aggrieved to speak to or see your children. Therefore, to avoid the potential of breaching the conditions in your protection order, it is always important to obtain parenting orders (where suitable) as quickly as possible after you separate from your partner. This will ensure that the children can continue to have a meaningful relationship with both parents.

Where parents already have parenting orders or are involved in family law proceedings, protection orders (either temporary or final) will often have an 'exception condition'. One example of this condition could be that a respondent is prohibited from contacting the aggrieved except for the purposes of arranging or having contact with the children by prior written arrangement or as provided by a family law order.

## Protection orders and family law proceedings

If a protection order is in place prior to commencing family law proceedings, then the family court will have to consider any current and previous protection orders and assess any risk of continued or renewed violence against family members.

In this instance, we might advise our clients to consider consenting to protection orders without admissions, as going to a hearing and possibly having a Magistrate determine there was an act(s) of domestic violence could seriously jeopardise a family law parenting application.

Where there is an allegation or finding of serious domestic violence, the family court may consider making an order for supervised time at a contact centre or making an order for time to be supervised by another family member. Supervised contact can also protect the alleged '*violent*' parent from untruthful ongoing allegations. If the allegations are considered to have a lesser risk of violence towards the children, it may be presumed a court will consider that the respondent having a meaningful relationship with the child is in the children's best interest.

## Summary

Having parenting orders in place as soon as possible after a relationship breaks down (subject to the absence of any domestic violence) often prevents the aggrieved parent from subsequently withholding the children or attempting to breach any parenting orders.

If parties can reach an agreement with respect to parenting matters, it is much more cost-effective and much less stressful. Parenting orders can then be made by the court without any attendance necessary.

If parties can't reach an agreement in relation to parenting arrangements, then a court will be required to determine the arrangements in the best interests of the child. This process can be costly and protracted. It is important to seek interim parenting orders to ensure that the children can develop a meaningful relationship with both parents.

## Hall Payne no longer provides services in family law

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

• **Queensland:** [1300 367 757](tel:1300367757)

• **NSW:** [02 9926 0333](tel:0299260333)

• **Victoria:** [03 9607 9311](tel:0396079311)

• **Tasmania:** [03 6234 4133](tel:0362344133)

• **South Australia:** [08 8229 0200](tel:0882290200)

• **Western Australia:** [08 9324 8600](tel:0893248600)

• **Northern Territory:** [08 8981 5104](tel:0889815104)

• **ACT:** [02 6274 0300](tel:0262740300)

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