

# COVID-19: Making parenting arrangements if you and your partner separate

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.**

The COVID-19 pandemic may make it more difficult to make parenting arrangements if you and your partner separate.

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](#).

## How do I make a parenting arrangement?

Many separating parents are able to make informal arrangements about where children should live and how much time they should spend with the other parent or carers.

When you make an informal parenting arrangement, consider these things:

- Think about the best interest of the child. This is what the court will consider is important because of the Family Law Act 1975 (Cth). You can [read more about what courts consider when they make parenting orders](#).
- Think about how you will use telephone, text messaging, Skype, Facetime, WhatsApp, email or other electronic means of communication.
- The agreement should be flexible. The agreement may need to change over time as new public health rules are announced or as your circumstances change. For example, some parents may need more help with childcare if they need to work and their children are ill, or schools or childcare services are closed.
- How will you practise social distancing during pick-ups and drop-offs. The Australian Government has published [guidelines on social distancing online](#).
- Try to make the agreement in writing. You can send an email, WhatsApp or text message to the other parent. It is good to have a record of what you agreed to. This will be helpful if you are involved in family law hearings later.

Information on formal arrangements like parenting plans and consent orders is given below.

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

## How do I get a parenting plan?

Parents can enter into formal agreements about caring arrangements for their children, known as parenting plans. A lawyer or family dispute resolution practitioner can help you and your ex-partner make a parenting plan.

You can [view an example of a parenting plan online](#). You should get legal advice if you are making your own parenting plan.

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A parenting plan:

- 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. A parenting plan can be changed by another signed written agreement.
- Is not a legally enforceable agreement. It is different from a parenting order, which is made by a court.
- The court can consider what was agreed in a parenting plan if you have to go to court later.
- Parenting plans 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 ended.

## What is a consent order?

A consent order is an agreement that is approved by a court. Consent orders are often made after you negotiate with the other parent with the help of a lawyer or family dispute resolution service. Consent orders are filed at court along with an application for consent orders. You'll find a [do-it-yourself kit for applying for consent orders online](#). Once consent orders are approved by the court they are legally enforceable, so if you are preparing your own consent orders, it is important to get legal advice.

Remember that during this pandemic there will be a lot of change, so even though you and your ex-partner may agree to consent orders now, they may need to be changed in the future. Because of this uncertainty, you may want to consider informal arrangements or a parenting plan.

## What if we can't agree?

If you and your ex-partner cannot reach an agreement about caring arrangements, you should keep the children safe until the dispute is resolved. You will usually need to attend family dispute resolution.

Family dispute resolution is mediation that helps people resolve family law problems.

- A family dispute resolution practitioner, or mediator, will try to help you and your ex-partner reach an agreement.
- Mediators must be registered and must do special training to work with families.
- The mediator will help you and your ex-partner work out what arrangements are best for the children and what will be practical in your situation.
- You can make arrangements about where the children will live and how much time they will spend with each parent, pick-ups and drop-offs, telephone or video communication, and sharing of information.
- It is important to talk about what you will do if you, your ex-partner, or the children need to self-isolate.
- If you and your ex-partner have lawyers, you can go through mediation with the help of your lawyers.
- If you reach agreement at the mediation, then you can follow the arrangements informally, enter into a parenting plan, or file consent orders at court.

If you are unable to reach agreement at the mediation, then you might need to apply to a court for orders. Usually, the court will not be able to deal with an application unless you get a certificate from a mediator. You do not need to get a certificate in some circumstances, such as when your matter is urgent, or family violence or child abuse has happened, or is at risk of occurring.

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Because of COVID-19, court services are currently limited. Family law courts are prioritising the most urgent cases. You should get legal advice if you are thinking about making a court application.

If your ex-partner has taken your children without your permission, or you are trying to find out where they are, you should get legal advice urgently. You can [view our resource kit for parents who are facing this situation online](#).

## 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](http://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.

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