

Child Abuse and Family Violence

How child abuse and family violence affects proceedings under the *Family Law Act*

The presumption of equal shared parental responsibility (see [HG Factsheet: Spousal Maintenance](#)) will not ordinarily be applied to parents if there has been child abuse or family violence by a parent or someone in their household.

Under the Act, “abuse” in relation to a child means:

- an assault, including a sexual assault of a child which is an offence under law, written or unwritten, in the State in which the act constituting the assault occurs; or
- a person involving a child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between a child and the first-mentioned person.

“Family violence” means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes any other member of the person’s family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

While the definition of abuse and family violence is very broad, not all complaints of family violence will be accepted by the Court as proven, nor will they necessarily be regarded as sufficiently serious to disturb the presumption of equal shared parental responsibility. The existence of a protection order will also not necessarily be taken as establishing that there has been family violence.

What happens if there is an allegation of child abuse or family violence?

If you allege that a child has been abused or is at risk of being abused, then you must file a prescribed form specified by the Court and serve it on the person who is alleged to have abused the child, or to pose the risk of abuse. The Court will provide a copy of that notice to the Department of Child Safety in Queensland (or the prescribed welfare authority in another State, if applicable).

If a member of Court personnel, or a family dispute resolution practitioner, forms the view that the child has been or is at risk of being abused, they must also make a notification to the Department of Child Safety. This requirement exists whether or not there are proceedings under the *Family Law Act*, particularly in relation to police, doctors, and counsellors. Those complaints are addressed to the Department of Child Safety.

The Courts take a serious view of allegations made by one parent against the other which have not been based on reasonable grounds, or are malicious or vindictive.

In many instances where there is sufficient evidence of child abuse or family violence, the court will appoint an Independent Children’s Lawyer, who will request information about the child’s schools, doctors and history. The ICL will often issue subpoenae and consider the experts who should become involved in the proceedings. Frequently, there will also be the appointment of a family consultant, a family report writer, or the preparation of a psychiatric report into adults, children, or both.

In some cases where the allegations of child abuse are serious, the matter will be allocated to a specific list, known as the Magellan List in the Family Court, for closer management by a judge and registrar.

Where time being spent by one parent with the child poses a risk of abuse to the child, parents can have that time supervised by a contact centre. From the point of view of the parent who is worried about risk to the child, a contact centre minimises the risk of abuse. From the point of view of a parent who is wrongly accused of abuse, a contact centre minimises the risk of further allegations.

The interaction between protection orders and family law proceedings

Applications for a protection order are made by the Magistrates Court (see [HG Factsheet: Family Violence](#)).

If a protection order has been made by the Magistrates Court, then the Family Court or Federal Magistrates Court can still make a parenting order that is inconsistent with the protection order. It should specify the inconsistency and explain how the parenting order (eg requiring one parent, who is protected by the protection order, to meet with the respondent so that the respondent can collect and spend time with children) is to be put into effect. It can also vary the protection order. The protection order (called a family violence order in the Act) is invalid where it is inconsistent with a parenting order.

In practice, a protection order will usually specify that the arrangements between parents, necessary to carry out the terms of a parenting order or agreements in writing about parenting, are an exception to the protection order to avoid any invalidity. For example, a respondent might be prohibited from approaching within ten metres of a protected person, but there is an exception for the handover of children pursuant to a parenting order.

The Department of Child Safety and child protection proceedings

The Department of Child Safety is separate to the Family Court and the Federal Magistrates Court. If a notification is made to DOCS that a child is at risk, it may investigate the notification, categorise the level of risk and decide whether to take further action or close the file. The threshold required for DOCS to establish its jurisdiction over a child is that the child is in need of protection.

A child in need of protection is a child who:

- has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
- does not have a parent able and willing to protect the child from the harm.

“Harm” is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing. Harm can be caused by:

- physical, psychological or emotional abuse or neglect; or
- sexual abuse or exploitation.

If DOCS takes the view that a child is in need of protection, they may:

- seek an order for the child who is in need of protection;
- try to develop a care agreement with family members;
- ask a Court for an assessment order (or a temporary assessment order to assist in the short term);
- remove the child from his or her parents immediately if the risk is thought sufficient;
- develop a case plan to put before the Court;
- seek a non-contact order with one parent or seek an order directing a parent not to do something;
- seek a custody order to a family member or to the Chief Executive of DOCS;
- seek a guardianship order to a family member or to the Chief Executive; or
- a combination of these orders.

DOCS may also become a party to any parenting proceedings in the Family Court or the Federal Magistrates Court of Australia. If, however, there are any existing or pending proceedings in the State courts under the *Child Protection Act 1999*, then any such orders take priority over a Family Court or Federal Magistrates Court order. If such an order appears likely to be made in pending State court proceedings, then the Family Court or Federal Magistrates Court would be expected to adjourn its proceedings until the conclusion of the child protection proceedings.

From a practical perspective, there are many more notifications of potential risk to children to DOCS than meaningful investigations, and many more investigations than there are cases confirmed. If there is no existing order or pending child protection proceedings, particularly where either parent expresses a firm intention of protecting a child, DOCS are likely to leave the matter to the Family Court or Federal Magistrates Court.

What should you do if you think your child has been or is at risk of being abused?

First, you should give us immediate and detailed instructions about all the facts that worry you. You will need to tell us approximate dates, what you saw or heard, and whether there are any documents that are needed to further investigate the risk such as police interviews, hospital notes, or medical reports.

We will discuss with you:

- the appropriateness of family dispute resolution in your particular circumstances;
- the filing of a Notice of Abuse or Risk of Abuse with the Court;
- a notification to the Department of Child Safety;
- what services can be available to you at a contact centre; or
- professional counselling and assistance.