



# The relationship between child protection laws and family law

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Many different areas of law often intersect with the family law jurisdiction. One of the most common is child protection law. Both jurisdictions are concerned with the care, welfare and development of children, and operate on the fundamental principles that the child's best interests are paramount. In this blog, we look at the intersection of child protection laws and family law, including how Court Orders work in both jurisdictions.

## The child protection and family law jurisdictions

### Child protection

The child protection jurisdiction aims to provide community services to support children and families and ensure the protection of children.

It is sometimes referred to as 'public law'. This is because it is premised on the safety and protection of children being a shared responsibility between the community and statutory services; for example, [the Department of Families Fairness and Housing \(DFFH\)](#) (previously known as the Department of Health and Human Services) working in partnership with police and courts.

DFFH is governed by the [Children, Youth and Families Act 2005 \(Vic\)](#), which provides the legislative framework under which child protection operates in protecting children suffering from, or at risk of, substantive harm in the family unit. These matters are usually heard in the Children's Court of Victoria (a State court).

## Family Law

While child protection can be referred to as 'public law', family law is sometimes known as 'private law'. This is because the family law system assists families in resolving the legal aspects of family relationship breakdown (private matters).

The [Family Law Act 1975 \(Cth\)](#) is the legislative framework for family law, the main aim of which is to enable the resolution or conclusion of disputes between separated families. It governs [parenting matters](#), [property matters](#) and [child support/maintenance disputes](#). These matters are usually heard in either the Family Court or Federal Circuit Court of Australia (both Commonwealth courts), depending on the complexity.

The two jurisdictions differ further in that child protection is governed by State legislation, whereas family law is governed by Commonwealth legislation. They are similar in that they both operate on the fundamental principle that the child's best interests are paramount, and they are both concerned with the care, welfare, and development of children.

Due to these similarities, the two jurisdictions tend to overlap. Both courts (the State and Commonwealth) can simultaneously be trying to determine the best interests of the same children, which can lead to multiple court orders regarding the same families, inconsistencies, and misunderstandings.

## Child protection orders vs family law orders

For matters where both the Commonwealth and State jurisdictions have concurrent power (such as child welfare), the Commonwealth jurisdiction usually takes priority.

However, if proceedings are underway in both child protection and family law jurisdictions, the Family Court and Federal Circuit Court of Australia will [usually adjourn \(stop\) their proceedings](#) pending a final decision being made in the Children's Court.

They do this to be able to obtain a more complete picture of the families' situation and circumstances from the determination in the Children's Court before making their decision about the best interests of the child.

The Family Court or Federal Circuit Court of Australia can only make an order for a child under care in [specific circumstances](#), such as:

- the order will only come into effect when the child ceases to be under that care; or
- the order is made in family law proceedings instituted or continued with the written consent of a child welfare officer.

Once a determination is made in the Children's Court as to the child's welfare, the family law proceedings can resume.

The *Family Law Act 1975* (Cth) [does not affect the child protection jurisdiction in Victoria](#). This means that orders made under the *Family Law Act 1975* (Cth) will not affect:

- the power of the Children's Court to make an order to place a child in the care of a person;
- the power of the Secretary (of DFFH) or DFFH (as an organisation) to take action to place a child in the care of a person;
- any order or action taken under the *Children, Youth and Families Act 2008* (Vic); or
- the operation of the *Children, Youth and Families Act 2008* (Vic).

## Child welfare reporting requirements in family law proceedings

Litigants in the Family Court of Australia or Federal Circuit Court of Australia must file a form called the '[Notice of child abuse, family violence or risk](#)' when filing an Initiating Application, a Response to Initiating Application or an Application for Consent Orders where a Parenting Order is sought. They must also file a new form if, during the proceedings, a litigant becomes aware of new facts or circumstances that may constitute family violence or child abuse.

If the 'Notice of child abuse, family violence or risk' form indicates that a child is or may be at risk of child abuse or family violence, the Court must report the allegation to a prescribed welfare authority (i.e. child protection or Victoria Police).

DFFH provides a written response to every 'Notice of child abuse, family violence or risk' that summarises its involvement with the family (if any), and the outcome of its investigations.

DFFH and Victoria Police also provide evidence to the Court by orders pursuant to section [69ZW](#) of the *Family Law Act 1975* (Cth). These orders are usually made when the Court needs more information about the alleged risk to the children. The orders compel DFFH and/or Victoria Police to provide the court with the documents or other information prescribed in the order.

## The Magellan List

The Magellan List is a case management model established in the Family Court of Australia that hears disputes involving allegations of serious (and current) physical and sexual abuse. Usually, these families will have a history of involvement with child protection.

The Magellan List focuses on evidence gathering and timely resolution of matters through strict timelines. [Independent Children's Lawyers are appointed](#) to these to make sure the best interests of the child are represented.

DFFH can provide information about matters in the Magellan List to the court in the form of a 'Magellan Report'. These reports outline the action taken to investigate the allegations of abuse and the outcome of same.

The aim of the Magellan List is to provide the family law court with as much information as possible so that an evidence-based decision can be made in the best interests of the children.

# The role of co-located child protection family law liaison officers

The co-located child protection family law liaison officer is a somewhat new position that is being rolled out across most family law court registries. They are a dedicated practitioner who is based at the family courts. Their role is to improve information sharing across the two jurisdictions of family law and child protection.

Child protection family liaison officers can provide information to the court and Independent Children's Lawyers as to when DFFH has some involvement with a particular family or child. This increases the information available to the family law court to inform evidence-based decision-making.

## Family Violence Intervention Orders (FVIO)

Both the child protection and family law jurisdictions will also often intersect with the family violence jurisdiction, which deals with [Family Violence Intervention Orders \(FVIO\)](#). These matters are heard in the Magistrates Courts and [Specialist Family Violence Courts](#). This means that three different courts could potentially be making orders and determinations regarding the same family or the same children at the same time.

Generally speaking, a FVIO is valid despite any existing child protection order. However, the family law courts can vary or revoke a FVIO if it would be inconsistent with an order that the family court proposes to make.

It can become increasingly difficult to know what court or order takes precedence in these circumstances. You should [seek legal advice](#) if you're having any difficulties understanding your rights or your obligations in relation to child protection and family violence issues.

You can learn more about FVIO's in family law matters in our blog, "[The impact of Family Violence Intervention Orders on family law proceedings](#)".

## How a family lawyer can help

Matters involving the welfare, care and development of children can often be incredibly complex. This complexity increases when allegations of child abuse, family violence or risk are made, as they usually will overlap across multiple jurisdictions.

[Contact us](#) to discuss your circumstances and receive legal advice from an experienced family lawyer to see where you stand.

## Contacting Smith Family Law

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