



Drugs and alcohol in family law

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Following separation, parents may need to consider [future care arrangements for their children](#). If either parent has any concerns in relation to the physical or psychological welfare of a child, including drug and/or alcohol misuse by a parent or where there is a history of [family violence](#), it is important to seek legal advice early.

Protecting a child from drug or alcohol misuse

When determining care arrangements for children following separation, the Court's paramount consideration is the child's best interests. The *Family Law Act 1975* sets out the primary considerations for determining a child's best interests as follows:

1. The benefit of a child having a meaningful relationship with both parents; and
2. The need to protect a child from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence.

In balancing the above considerations, the Court must give **greater** consideration to protecting a child from harm, which may include drug or alcohol misuse.

Requirement to file a Notice of Child Abuse, Family Violence or Risk in family law proceedings

At the beginning of each parenting case, each parent must file a Notice of Child Abuse, Family Violence or Risk with the Court. This is a mandatory form that must be filed with any Initiating Application, Response to Initiating Application or Application for Consent Orders [seeking parenting orders](#).

This form details any concerns that a parent may have with respect to drug or alcohol misuse (amongst other things, such as family violence).

The Notice of Child Abuse, Family Violence or Risk is then served on the Department of Families, Fairness & Housing – Child Protection. As a result, Child Protection may investigate any concerns with respect to the safety of a child and provide a response to the Court. In some circumstances, Child Protection may even seek to intervene in family law court proceedings.

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Tests to determine extent of drug or alcohol misuse in family law proceedings

If allegations have been made by one parent as to drug or alcohol misuse by the other parent, to ascertain the extent of any drug or alcohol use and thereby any risk to the child, the Court will routinely order the following tests:

1. Urine analysis

Random urine drug screens are the most common method of testing as they are relatively cost effective and non-invasive. However, different drugs only stay in the body for different periods of time and the results may therefore be limited.

1. Carbohydrate deficient transferrin test

This involves a blood test to ascertain excessive alcohol consumption.

1. Hair follicle testing

Hair follicle testing can determine a person's pattern of drug or alcohol use over a period of time. The advantage of hair follicle testing is that there is a longer window of detection.

If the Court makes orders for drug and/or alcohol testing, a parent must comply. If a parent breaches this order, this may result in contravention proceedings and could have serious ramifications on longer term care arrangements.

The Court may also draw an adverse inference that the parent would have tested positive in the event that they had complied with the testing requirement.

Protecting children from harm throughout Court proceedings

In the interim, whilst awaiting drug and alcohol test results and assessing any potential risk of harm, the Court may place a range of measures in place to ensure the safety of a child. These may include supervised visits (with an agreed family member or friend or a professional contact service) or limiting or suspending face-to-face visits until further order.

The Court may also make orders requiring one or both parents to undergo psychological/psychiatric risk assessment and/or drug and alcohol treatment or rehabilitation.

An allegation of drug or alcohol misuse will not necessarily mean that a child will no longer spend time with that parent. Rather, it will become the Court's task to assess a parent's capacity to appropriately care for the child in a safe manner and determine what parenting arrangements ought to be implemented to minimise any risk of harm to the child.

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What happens if you attend changeover and the other parent appears under the influence of drugs and/or alcohol

Once parenting orders (interim or final) have been made, they ought to be complied with. However, in the event that you attend changeover and have good reason to believe that the other parent is under the influence of drugs and/or alcohol and may place your child at risk of harm, you may decide to suspend that visit.

In doing so, it is important to be aware that you may be in breach of the orders unless you have a "reasonable excuse".

The Federal Circuit and Family Court of Australia website defines "reasonable excuse" as follows:

"If the Court decides a person has failed to comply with an order, it will consider whether the person had a reasonable excuse for contravening the order. Some examples of reasonable excuses that may satisfy the Court include:

- 1. the person did not understand the obligations imposed by the order, or*
- 2. the person reasonably believed that the actions constituting the contravention were necessary to protect the health and safety of a person, including the person who contravened the order or the child, and*
- 3. the contravention did not last longer than was necessary to protect the health and safety of the person who contravened the order or the child."*

Failing to comply with an order is not something that should be done lightly, and it is always a good idea to speak with a lawyer before doing so (if possible).

Get help from a family lawyer

If you have any concerns with regard to drug or alcohol misuse (or family violence) and the impact that this may have on future care arrangements for your children, it is important to seek legal advice early. Our team of experienced family lawyers can advise you on your options. We provide an initial consultation free of charge.

Drug and/or alcohol support

If you require drug or alcohol support, the Federal Circuit and Family Court of Australia lists [a range of support services available here](#).

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You may also like to read:

- [Applying for Family Violence Intervention Orders](#)
- [6 steps when negotiating parenting arrangements with your ex](#)
- [A guide to Child Impact Reports and Family Reports](#)

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