

PARENTING AND CHILD SUPPORT ISSUES FOR THOSE AFFECTED BY BUSHFIRES OR OTHER NATURAL DISASTERS.

This factsheet is for people affected by the recent bushfires. It has information about family law parenting issues and child support and will explain your legal rights and options. It also has the contact details of organisations that can help you.

Language and Terminology

It is useful to understand the language and terminology used in parenting matters as this will help you work out your obligations and available options.

If parents are able to reach an agreement about parenting arrangements, they can have:

- 1) an **informal agreement**;
- 2) a **parenting plan**; or
- 3) apply for **consent orders**.

If parents are not able to reach an agreement, they can apply to the Federal Circuit Court of Australia or the Family Court of Australia for **parenting orders**.

INFORMAL AGREEMENT

An informal agreement can be written or oral. The benefit of an informal agreement is that it gives parents the flexibility to change the parenting arrangements when needed. Both parents retain parental responsibility for the child/ren. An informal agreement cannot be enforced if one parent does not follow the agreement.

PARENTING PLAN

A parenting plan is a written agreement, signed and dated by you and the other parent. It sets out the future care arrangements for your children. It can cover who has parental



responsibility for the child, who the child lives with, spends time with and communicates with, child support payments and other issues.

Parenting plans are not legally binding and cannot be enforced if one parent does not follow the agreement. However, the Court will consider the arrangements in a parenting plan if your case later goes to Court.

CONSENT ORDERS

If parents want legally enforceable orders, they can ask the Family Court to make orders that reflect the agreement they've reached. These are called consent orders and are legally enforceable. Consent orders are difficult to change without agreement between the parents to change the orders or without a significant change in circumstances, which is the test the court needs a parent to establish before the court will consider changing consent orders.

PARENTING ORDERS

If parents can't reach an agreement, they can apply to the Federal Circuit Court of Australia or the Family Court of Australia for parenting orders. The Court will make a decision based on the best interests of the child. Parenting orders are legally enforceable.

I have not been able to follow an informal agreement, parenting plan or parenting order because of the bushfires (or other natural disaster). What should I do?

The court cannot enforce an informal agreement or a parenting plan so if you are not able to follow an informal agreement or a parenting plan, you can't be punished by the court. However, it is possible the other parent will apply to the court for a parenting order if they are not seeing the children. If you are served with (given) an application for parenting orders, it's important to explain to the court how and why the bushfires stopped you from following the informal agreement or a parenting plan and how up until the fire, you were following the agreement you had in place.

Unless you have concerns for the safety of your children when they are with their other parent, it is important to help the children stay in touch with the other parent so their relationship can continue until the children are able to see the other parent again in person.

Parenting orders (including consent orders) are enforceable, meaning that a person is required by law to comply with (follow) them. Sometimes though, it's not possible but in these cases, you will have to show the court that you have a reasonable excuse for not complying. In the case of a bushfire emergency, you will need to show the court how and why the bushfires stopped you from complying with the orders.

Get legal advice if you are worried about your children's safety when they are with the other parent.

My situation has changed because of the bushfires (or other natural disaster) and I need to change my parenting order or parenting plan. How do I do this?

The Family Law Act requires all decisions to be in the best interests of the children. It's important that any proposal you have is in the best interests of your children.

If it's safe to talk with the other parent, discuss the changes you wish to make to your parenting order or parenting plan, including whether it's for a short period or long term and see if you can come to an agreement. If it's not safe to talk, put your reasons for the changes in writing.

If you reach an agreement, put the agreement in writing. You can change a parenting plan by making a new one which is dated and signed by both parents. If you have a parenting order that was made on or after 1 July 2006 and both parents agree on the changes, you can change the order by making a parenting plan. The parenting plan can over-ride the entire parenting order or it can over-ride just some of it. It's important to make clear in the parenting plan what you are intending to change.

If you can't reach an agreement and you have court orders, you will need to get the order varied to show the new arrangements. You will need to show the court that the need to change the order is urgent and that the usual requirement to do family dispute resolution (mediation) before applying to the court is not appropriate. You will also need to show the court that the natural disasters have meant there has been a substantial and significant

change in circumstances which mean it is appropriate for the court to make new orders and that your proposal is in the best interests of the child.

The children seem really affected by the bushfires (or other natural disaster) and don't want to leave me to spend time with their other parent. What should I do?

When children suffer trauma, they may regress (go backwards in their development) and may not wish to be apart from the parent they spend most of their time with. If it's safe to do so, try to talk with the other parent about how the children are feeling, perhaps with the help of a counsellor. You could also send the other parent an email or a text message which explains how the children are feeling and that you'd like to keep them with you for a few weeks while things settle down. Consider whether there are other ways the children could keep in contact with the other parent during this time, like by phone or by the other parent visiting the child.

If you have a parenting order (including consent orders), it is possible that the other parent will ask the court to enforce the orders if you are not complying with them. You will need to explain to the court the reasons why you have not been able to comply with the orders and the court will decide whether your reason is a reasonable one. You can also explain any alternative temporary arrangements you proposed.

I want or need to move my children from a bushfire (or other natural disaster) affected area? Do I need the other parent's permission?

Whether or not you need the other parent's permission to move will depend on the type of agreement you have with the other parent and the terms of any agreement.

If you have an informal agreement or a parenting plan and it's safe to talk with the other parent, discuss your wish to move, including whether it's for a short period or long term and see if you can come to an agreement. If it's not safe to talk, put your reasons and your plan for where and for how long you intend to move in writing. If you reach an agreement, put the agreement in writing.

If there are court orders (including consent orders), it is likely that you will need to talk with the other parent before moving the children away, particularly if it will have an effect on the time the children spend with the other parent, or involves a change of school. You should obtain legal advice from a solicitor about what your obligations are under the orders. If you

can't reach an agreement and have court orders, it is likely that you will need to get the order changed (varied) to show the new arrangements. You will need to show the court that the need to change the order is urgent and that the usual requirement to do family dispute resolution (mediation) before applying to the court is not appropriate. You will also need to show the court that the bushfires have meant there has been a substantial and significant change in circumstances which mean it is appropriate for the court to make new orders and why they are in the best interests of the child.

It's important to get legal advice before moving because even without court orders in place, the other parent can apply to the court for orders requiring the children to be brought back to live in the area they usually live in.

I have lost my court documents or parenting plan in the bushfires (or other natural disaster). How can I get replacement copies?

The Family Law Courts (Family Court of Australia and the Federal Circuit Court of Australia) will provide replacement copies of court documents without charge for people who have lost their documents as a result of a natural disaster.

Contact the Family Law Courts at the National Enquiry Centre on **1300 352 000** and ask for a copy of their *Natural Disaster Factsheet* and the form *Natural Disaster Replacement Document Request*. Information about how to access these forms on the internet is included in the 'Where to get help' section of this factsheet.

If you made your parenting plan with the assistance of a lawyer or a Family Relationship Centre, contact them to see if they have a copy of the parenting plan. If it is safe, you could ask the other parent if they will provide you with a copy of any lost documents.

My relatives or friends have died in the bushfires (or other natural disaster) and I would like to get orders that have their child live with me. Is this possible?

It is understandable that you would like to care for the child at this time. If the child's parents have died, it is a good starting point to find out whether they had a will. The parent's will may have made an appointment of a guardian for the child in the event that they die. In NSW, if there is a guardian appointed by a will (a testamentary guardian) and there is no dispute about the appointment made under the will, then there is no need to

apply for a Court Order about who will care for the children or where the children will live (*Guardian of Infants Act 1916*).

If the Department of Communities and Justice (DCJ) are involved you should contact the caseworker and let them know that you are interested in caring for the child.

If you are the grandparent of a child, you may be able to seek Parenting Orders through the Family Courts. If you are not a grandparent of the child, you may also be able to apply for Parenting Orders if the Court decides you have standing (the right to commence legal proceedings) because you meet the threshold that you are a person concerned with the care, welfare or development of a child. The Court will decide this on a case-by-case basis.

Parenting Orders can include provisions about parental responsibility (all duties, powers, responsibilities and authorities for all aspects of the child's care), where the child lives, or how the child spends time with you and important people in the child's life. The Family Courts are required to make a decision that is in the best interest of the child when deciding what Parenting Orders should be made. If the child has lost their parents in the bushfires, the Court is likely to consider:

- whether there are relatives who know the child and could take care of them;
- the relationship that exists or has existed between you and the child;
- whether the children living with you would take them away from friends and family;
- whether you would help the child stay in touch with friends and relatives; and
- the ages of the child and if they are old enough for the court to listen to their views.

An alternate option you may also consider is adoption. Adoption is dealt with under the laws of each state and territory. Adoption is a permanent legal transfer of all parental rights from biological parents to another person or couple. Adoption is one option giving a child long-term or permanent care.

The NSW *Adoption Act 2000* and the NSW *Adoption Regulation 2015* set out the requirements that relate to intrafamily adoption in NSW, which is adoption of a person by a step-parent or close relative. If you are neither a step-parent or relative of the child you wish to adopt, it is an offence to arrange a private adoption unless it is specifically authorised by the Community Service (CS) division of the Department of Communities and Justice. A child can be adopted if they are:

- Less than 18 years old on the date the application is made; or
- 18 years or older on the date the adoption application is made and are cared for, or were cared for as a child before turning 18 by the step-parent or relative making the adoption application.

It is possible to apply for adoption by yourself or jointly as a couple in certain circumstances. Applications for adoption are heard and decided by the NSW Supreme Court. Step-parents must also apply to the Family Court for permission to adopt before making an application to the Supreme Court.

When deciding whether a child should be adopted, the Supreme Court must make a decision that is in the best interest of the child, both in childhood and later in life.

If you decide to go ahead, get legal advice before taking any action to have the child live with you.

My financial circumstances have changed. What happens if I cannot meet my child support obligations?

If you have a child support assessment and the fires (or other natural disaster) have led to a change in your income as a parent either paying or receiving child support, call the child support payment hotline on **1800 241 272** to provide updated details.

Services Australia has provided additional support for families in bushfire affected areas. This support includes:

- Additional payment for children (a one-off payment of \$400.00 per child);
- Additional Child Care Subsidy (Temporary Financial Hardship) for short term help for families using child care and in significant financial hardship; and/ or
- Child Care Subsidy (CCS) - families in bushfire declared areas have an exemption to the CCS activity for this financial year (2019-2020).

Contact the Disaster Payments Hotline on **180 22 66** to discuss the disaster recovery assistance and payments that may be available to you as well as to access Centrelink, Medicare and Child Support Services.

Information about where to access, and links to the information on these payments is included in the 'Where to get help' section of this factsheet.

Where to get help

Family Law Courts

Tel: 1300 352 000 (National Enquiry Centre)

- *Natural Disaster Factsheet*
- *Natural Disaster Replacement Document Request form*

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/natural-disaster>

Family Relationship Advice Line

Tel: 1800 050 321 Monday to Friday, 8:00am - 8:00pm / Saturday, 10:00am - 4:00pm

Services Australia

Tel: 1800 241 272 (Child Support Hotline),

Tel: 180 22 66 (Disaster Payments Hotline)

- Support for families in bushfire affected areas:
<https://www.servicesaustralia.gov.au/individuals/news/support-families-bushfire-affected-areas>
- Disaster Recovery Allowance:
<https://www.servicesaustralia.gov.au/individuals/services/centrelink/nsw-bushfires-september-2019-disaster-recovery-allowance>
- Australian Government Disaster Recovery Payment:
<https://www.servicesaustralia.gov.au/individuals/services/centrelink/nsw-bushfires-september-2019-australian-government-disaster-recovery-payment>

Legal Aid Disaster Response Legal Service NSW

Tel: 1800 801 529

[www.https://disasterhelp.legalaid.nsw.gov.au/](https://disasterhelp.legalaid.nsw.gov.au/)

LawAccess

Tel: 1300 888 529 Monday to Friday, 9:00am - 5:00pm

Women's Legal Service NSW

Tel: 8745 6988 or 1800 801 501 (rural) www.wlsnsw.org.au

Tuesdays 1:30pm - 4:30pm / Thursdays, 9:30am - 12:30pm,

Interpreters - Translating and Interpreting Service (TIS)

Tel: 131 450 (24 hours)

Hearing Impairment - National Relay Service

Tel: 1800 555 630 (TTY service)

Lifeline

Tel: 13 11 14, www.lifeline.org.au

Tel: 13 43 57 - Bushfire Recovery Helpline

Beyond Blue

Tel: 1300 224 636, (24 hours), <https://www.beyondblue.org.au>

Kids Helpline

Tel: 1800 55 1800 (24 hours), <https://kidshelpline.com.au>

NSW Council of Social Service - Bushfire Relief Resource

<https://www.ncoss.org.au/capacity-building/sector-support/templates-and-resources/bushfire-relief-assistance-resource>

Communities and Justice - Bushfire Housing Assistance Service

Tel: 1800 018 444, <https://www.dcj.nsw.gov.au/families-and-communities/bushfire-housing-assistance-service>