

Drugs and alcohol in family law parenting matters

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Drugs, alcohol and family violence are common factors in family law matters. The way in which such factors or allegations are dealt with, depends on whether they are related to a parenting matter or a property matter. In this blog, we will explore how issues and concerns about drugs, alcohol and family violence (domestic violence) are dealt with in parenting matters.

For more information about drugs, alcohol and family violence in relation to property matters, please read our blog “Drugs and alcohol in family law property matters”.

The best interests of the children are paramount

The paramount consideration that the Court must take into account when making parenting orders is the best interests of the child. The Court cannot make orders that are not in the child’s best interests.

The general considerations taken into account by the Court to determine what is in a child’s best interests are as follows:

- The need to promote the safety of the child and each person who has care of the child, whether or not this person has parental responsibility of the child (including safety from family violence abuse, neglect or other harm).
- Any views expressed by the child.
- The developmental, psychological, emotional and cultural needs of the child.
- The capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child’s developmental, psychological, emotional and cultural needs.

- The benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so.
- Anything else that is relevant to the particular circumstances of the child.

There are also a number of 'further' considerations that the Court must consider when determining the best interests of Aboriginal and Torres Strait Islander children.

The general and further considerations are non-hierarchal and focus on a core list of considerations to best promote the child's welfare and development. The Court is not required to give more weight to any one factor over the others (although the Court still has the discretion to place whatever weight as they deem appropriate to a certain consideration).

However, when determining what is best for the child/children, the Court will give greater weight to the need to protect a child from physical or psychological harm or from being subjected to, or exposed to, abuse, neglect or family violence over the benefit to a child of having a meaningful relationship with both parents.

For more information about children and parenting matters, you can read this overview on our website.

How the Courts deal with drug and alcohol misuse in parenting matters

Drug and alcohol misuse is a common issue raised in parenting matters.

In parenting matters, allegations of drug and alcohol misuse are dealt with through risk assessment to assess how such misuse impacts (or may impact) the parent's capacity to appropriately care for the child. In any parenting matter before the Court, parties are required to submit a document called a 'Notice of child abuse, family violence or risk' where parties are obliged to detail any drug or alcohol use that may impact the child.

The challenge that arises from drug and alcohol misuse is assessing the extent of any risk of drug and/or alcohol misuse and determining what parenting arrangements should be implemented so as to facilitate the child's relationship with the parent and to ensure that the child is safe.

How the Courts deal with family violence in parenting matters

Family violence (domestic violence) is harmful behaviour that is used to control, threaten, force or dominate a family member through fear. It has a broad definition and can include many types of violence and controlling behaviours.

Allegations of family violence and the existence of Family Violence Intervention Orders are present in many parenting matters. Much like allegations of drugs and alcohol, any alleged risk to the child of family violence must be managed and properly dealt with. A mere allegation of family violence does not mean that the child will no longer spend time with the alleged perpetrator, but it will depend on the types of allegations made and what can be done to minimise any alleged risk.

For more information about how Family Violence Intervention Orders interact with family law parenting proceedings, you can read our blog, “The impact of Family Violence Intervention Orders on family law proceedings”.

How the Court deals with allegations of risk to children

Often, it is not merely an allegation of drugs, alcohol, or family violence that results in the child not spending time with the alleged offending parent. It is more important that the alleged offending parent show that they are taking steps to reduce any potential risk (whether or not there is any truth to the allegations). It is not enough to merely deny the allegations.

There are many ways that allegations of risk to children can be managed and addressed. These can include, but are not limited to the following:

- The child may spend supervised time with the parent, either with an agreed upon friend or family member, or by a professional supervision service. This can occur on a temporary or ongoing basis, depending on the circumstances.
- A parent may be subject to alcohol monitoring or drug tests, like urine, blood or hair follicle tests depending on the type of drug use. The length of time that the parent is subject to such tests will depend on the circumstances of the matter, including the nature of the allegation and the results of any test.
- A parent accused of family violence can complete an anger management course that helps them manage their behaviours. For example, a Men’s Behavioural Change Course or a SEA Change – Women’s Anger Management Course.
- A parent can also complete post-separation parenting courses to learn how their actions affect their children.
- The child’s time with the alleged offending parent can be suspended until such time as the parent completes an appropriate rehabilitation course.

The way in which risks of drug and/or alcohol misuse or family violence are managed will depend entirely on the individual circumstances of each matter.

Addressing the allegations of risk and any concerns raised by the other party (such as by completing a series of drug/alcohol tests or an anger management course) is not seen to be an admission of guilt. Denying the allegations does nothing to move the matter forward as the Court cannot be satisfied that the children are not at risk based on only ‘he said/she said’ evidence.

It is often better for any allegations to be directly addressed rather than just denied. This is because the Court can only make orders that are in the best interests of the children, and a prominent part of that is ensuring that the children are not at risk of harm.

How a family lawyer can help

Due to the complexities associated with drugs, alcohol, and family violence in parenting law matters, there is no ‘one size fits all’ approach.

The misuse of drugs and/or alcohol and the existence of family violence can have a significant impact on parenting proceedings. So, it is important that your case is being managed properly and any risk to the children is appropriately addressed.

If you have concerns about drug and/or alcohol misuse or family violence, we recommend you seek legal advice to see what the next steps are in your parenting matter.

Contacting Smith Family Law

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Drugs and alcohol: get help and support

There is a range of national drug and alcohol support services that can assist, including counselling and outreach organisations.

Crisis support:

- Lifeline
  13 11 14
- Beyond Blue
  1300 224 636
- Alcohol Drug Information Service
  1800 250 015
- Alcoholics Anonymous
  1300 222 222
- Family Drug Support Australia
  1300 368 186
- Kids Help Line
  1800 551 800

Counselling services and outreach organisations:

- National Alcohol and Other Drug Hotline
  1800 250 015
- Alcohol and drug counselling online
- Drug and Alcohol Services Australia
- Lives Lived Well
  1300 727 957

Family violence: get help and support

If you are in immediate danger call 000.

If you are not in immediate danger, you can still report family violence to the police by calling 131 444 or by attending a police station.

For other family violence services, please refer to our blog about family violence and support services.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.