

Supervised time in family law parenting matters

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Following separation, many parents are able to come to an agreement between themselves about arrangements for the care of their children. However, often there can be disputes about these parenting arrangements. In some circumstances and under certain conditions, an arrangement for supervised time with the children may be an option.

Special note - changes to the Family Law Act

On 6 May 2023, significant changes to the *Family Law Act 1975* (Cth) will come into effect. Please note that the information on this webpage *may* no longer be current.

If you are unsure about what the changes mean for you and your family, contact us for a free initial consultation: 03 8625 8957

In this blog, we look at the options available for supervised time as part of your parenting arrangements.

- Best interests of the child are paramount
- What is supervised time?
- Supervision vs substantial attendance
- When is supervised time implemented?
- Types of supervised time
- The transition to unsupervised time

Before we begin, it's worth noting that when parents cannot agree about arrangements for the care of their children, it is prudent to seek legal advice so that parents can reach a resolution that is practical and appropriate for them.

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Best interests of the child are paramount

The paramount consideration that courts must take into account when making Parenting Orders is the best interests of the child.

The primary considerations in determining what is in a child's 'best interests' are:

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

Where there is an allegation of risk for a child, this risk can sometimes be mitigated or addressed through the implementation of supervised time.

What is supervised time?

Supervised time refers to an arrangement in which a person (usually a parent) spends time with a child under the supervision of another person. This arrangement is usually implemented where there are concerns or allegations about a child's safety or well-being when in the sole care of that person.

These concerns could arise due to allegations of family violence, substance abuse, mental health issues, or other factors such as parenting capacity.

In most cases, supervised time is a temporary measure put in place until parents (and, if relevant, the Court) can determine whether supervised time is appropriate in the long term. It may be that before progressing to an unsupervised arrangement, the time arrangements progress to a third party being in 'substantial attendance', rather than 'supervising' the time.

Supervision vs substantial attendance

Supervised time

'Supervised time' means that the supervisor must be present at all times when the children are with the parent and ensure that the children are safe at all times.

They do this by closely monitoring and observing the interactions between the parent and child and ensuring that the child is not exposed to any inappropriate or harmful behaviour. If the supervisor witnesses such behaviour, they are responsible for intervening and taking appropriate action (such as removing the child from the area and returning them to the other parent).

Often, supervisors will provide reports of their observations to the Court during the supervised time. These reports are used as evidence where there is a dispute as to whether ongoing supervised time is necessary.

Substantial attendance

'Substantial attendance' is a more relaxed arrangement, where an agreed person is nearby during the majority of the time spent with the child so that they can assist if needed, but they are not necessarily 'supervising' or present at all times.

There are similar obligations placed on parties who are to be in 'substantial attendance' during time arrangements, including intervening if the child is potentially at harm and providing an account of their observations to the Court. Their observations are not usually as detailed as a 'supervision' report as it is a more relaxed arrangement.

After some time has occurred on a supervised basis and/or with someone in substantial attendance, if the concerns are assuaged or the allegations of risk are not proven, usually time will progress to an unsupervised arrangement.

When is supervised time with children implemented?

Supervised time can be implemented either by agreement between the parties or through a Court Order. Whether supervised time is appropriate in the circumstances will be assessed on a case-by-case basis, noting that the child's best interests are the paramount consideration.

Usually, supervised time will be implemented as a safety precaution before such time as there is additional evidence available to determine whether or not ongoing supervised time is actually necessary.

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When determining whether supervised time is appropriate or necessary, the Court will consider a number of factors including, but not limited to, the following:

Safety concerns

Supervised time may be considered where there are allegations of family violence, child abuse, neglect or any kind of situation that could pose a risk to the child's safety.

This can include the existence of a Family Violence Intervention Order, any prior Child Protection involvement or recommendations, along with any allegations made by either party.

Parental capacity

Whether a parent is struggling with or has in the past struggled with significant mental health issues, substance abuse or other similar challenges such as a medical concern that could impact their ability to appropriately care for the child.

Child’s age and needs

How old the child is, their needs and whether that child can appropriately communicate how they are feeling could be factors that suggest that supervised time should be considered.

For example, it may be appropriate for very young children or children with special needs to have supervised time until such time as the child can communicate properly or the parent can show they are able to accommodate the child’s additional needs.

Relationship with the parent

If there has been a long absence where the child has not spent time with the parent or a strained relationship between the parent and child, supervised time may be recommended in the beginning stages to rebuild trust and establish a positive bond.

Types of supervised time with children

Supervised time arrangements can vary between each family, and the type of supervised time will depend on the type of concerns and allegations that are present. Some common types of supervised time include:

Professional supervision

Professional supervision is usually implemented where there are significant safety concerns for the child. There are a number of professional supervision services around Australia who use trained staff to handle potentially volatile situations and ensure the child’s safety.

Neutral location

It may be that supervised time spent with the child could take place in a public place with other people around or in a neutral and controlled environment (such as a supervised contact centre or at an after-school activity). These types of locations can provide security for the child and the parent.

Restraint on moving to a new location during supervised time

It may also be that a restraint on moving to a new location or venue during supervised time spent can also help to address the concerns.

For example, an agreement may be for the child to spend time with their parent at a safe location, such as a public library, park or playground. In that situation, the parent would further be restrained from taking the child to another location during time, such as the parent's home or such location that is considered 'unsafe' in the circumstances.

The types of locations and restraints could differ depending on the types of concerns/allegations present.

Third-party supervision

In some cases, it may be appropriate for a trusted mutual friend or family member to supervise the time. Sometimes the other parent can be the supervisor during time, however, this option is usually only appropriate if there is a high level of trust and friendliness between the parents.

Supervised changeovers

It may also be sufficient for changeovers (often called handovers) to occur in a supervised setting before the actual 'spend time' arrangements occur on an unsupervised basis.

This type of arrangement can be appropriate if there is a concern about mental health or drug use so that the supervisor can ascertain the parent's mood and presentation before time spent with the child goes ahead.

The transition to unsupervised time with children

Supervised time is usually implemented as a temporary arrangement until parents and the Court can see how the child copes with such time, and there is further evidence available to determine whether there is a need for supervision.

The ultimate goal is usually to transition to unsupervised time once it has been determined that any safety concerns or allegations of risk have been adequately addressed.

The transition is typically a gradual process that involves ensuring that the parents are able to demonstrate consistent positive behaviour and adhere to any relevant conditions of the time (such as not consuming drugs or alcohol prior to or during time spent with the child).

Supervised time can also assist the parents to build trust between themselves and develop a co-parenting relationship where appropriate.

Seek legal advice from a family lawyer

It’s not unusual for parents to have different views about what is in their child’s best interests or disagree about whether there are legitimate risk concerns in relation to a child spending time with a parent.

Supervised time can be implemented in family law matters as a tool to ensure the safety and wellbeing of children where there are concerns about their safety and wellbeing. It allows parents the opportunity to maintain or re-establish a relationship with their child while ensuring that the child’s needs are being met until such time as it can be determined whether ongoing supervised time is necessary.

If you’re working through parenting arrangements after separation and you need assistance to ensure the best interests of the children are being protected, our family lawyers have significant expertise and experience in all aspects of parenting disputes.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

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.