

Supporting clients through COVID-19

AskLOIS

Factsheet



This fact sheet summarises the Ask LOIS webinar on this topic presented on 6 May 2020 by Kellie McDonald, Senior Solicitor, WLS NSW
To view this webinar for free, or to access other resources, visit www.asklois.org.au

This factsheet will cover the following:

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Help for DV Victims

Women's Legal Service NSW

WLS NSW is still providing all our advice services, except our evening advice service, but all advice services will be by phone. Women can continue to make appointments via our outreaches at Blacktown, Liverpool and Penrith WHCs, Bonnies and Penrith and Blacktown FRCs for telephone advice. Women wanting advice through our Working Women's Legal Service can make an online request via our website. We are giving advice to prisoners over the phone and video conferencing.

Other legal help

- WDVCS and the DVLO should be liaising with women who have upcoming AVO matters listed. They should be advise the Police prosecutor of any changes women want to make to the AVO.
- Women with AVOs listed at court should have access to the domestic violence practitioners scheme solicitor on the phone, however, support workers can also refer clients to WLS for advice prior to their court event.
- LawAccess – information and referrals available on the phone or on their website.

- Legal Aid NSW – legal advice over the phone and new factsheets about COVID-19 related matters on their website www.legalaid.nsw.gov.au

Housing

- The Public Health Emergency Operations Centre has confirmed that women and their children can leave their home, or the place there are staying, while in quarantine or self-isolation to avoid injury or escape a risk of harm from domestic violence.
- Further \$14 million funding has been provided to increase the supply and flexibility of temporary accommodation and to accelerate the progress of social housing applicants, including accommodation suitable for self-isolation.
- Temporary accommodation hotel register – there is now a central register of available and appropriate hotel accommodation for DV victims and their children.
<https://www.homelessnessnsw.org.au/resources/access-register>
- Rent Choice Start Safely – rent subsidy to help victims of DV afford to rent in the private rental market.
<https://www.facs.nsw.gov.au/housing/factsheets/start-safely>
- Domestic Violence Line (1800 RESPECT) – help with women's refuge or emergency accommodation and help with safety planning, information and referrals.
- Link2Home – state-wide homelessness information and referral service.
<https://www.facs.nsw.gov.au/housing/help/ways/are-you-homeless>

Financial support

- Centrelink crisis payment – same process – call 132 850 or complete claim form SU510 and submit via online services.
- Red Cross – emergency relief payments – available to people on temporary visa who have no way of supporting themselves and have urgent needs – one off payment for essential needs like food and medicine.

- Clients experiencing financial hardship should contact their bank, water, energy and telecommunication providers for information about COVID-19 hardship schemes.
- Financial counsellors can assist people negotiate with credit and service providers.
- Early access to super – can apply to the ATO for access to \$10,000 in 2019-20 and \$10,000 in 2020-21 but should be last resort. See WLS Victoria's factsheet for more information.
- <https://womenslegal.org.au/files/file/Coronavirus%20Superannuation%20Brochure%20-%20FINAL.pdf>

Parenting orders

Temporary arrangements

It may be difficult for some families to comply strictly with parenting orders. For example, where changeover occurs at a contact centre and the contact centre is closed.

People should try to reach a new temporary agreement, respecting the spirit of the orders. For example, where a contact centre is closed, they could meet in a public place, for example, McDonalds or a Police station. Changeover may be able to be facilitated by family members.

Any new agreement should be in writing and any temporary arrangements should have an end date or a date the arrangements will be reviewed.

We recommend parents get legal advice before signing an agreement because a written agreement that is signed and dated by both parents is a parenting plan and overrides existing orders.

Self-isolation

If parents/children are required to self-isolate:

- advise the other parent ASAP in writing the period they/the children will need to self-isolate;
- send evidence that says they/the children need to self-isolate;
- try to facilitate time with the other parent by video conferencing or by phone.

Interstate travel

If parenting orders include interstate travel, parents should check with the relevant State/Territory authorities about border restrictions and quarantine requirements. There may be exemptions that enable families with court orders in place

to travel across State/Territory borders. If so, parents should travel with a copy of their orders and photo ID.

Orders made after June 2017 are available on the Commonwealth Courts Portal www.comcourts.gov.au If orders were made before June 2017, or parents cannot access the Portal, they can contact the National Enquiry Centre for a copy:

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/national-enquiry-centre/fl-nec>

Family Dispute Resolution (FDR)

FDR is mandatory before making an application to court, unless the matter is urgent, there is family violence and it is not safe to participate in FDR, or orders were made less than 12 months ago.

Legal Aid NSW is operating a COVID-19 Telephone Mediation Service which has a more generous means test, giving people who may not usually be eligible for legal aid, access to the service.

Any new agreement should be in writing and any temporary arrangements should have an end date or a date the arrangements will be reviewed.

We recommend parents get legal advice before signing an agreement because a written agreement that is signed and dated by both parents is a parenting plan and overrides existing orders.

Parents can eFile an application for consent orders via the Commonwealth Courts Portal: www.comcourts.gov.au Parents should get legal advice before filing consent orders.

Varying parenting orders

If no agreement can be reached, parents can eFile an application to vary the orders.

We recommend parents get legal advice before filing an application to vary parenting orders.

Parents need to be able to satisfy the court there has been a significant change in circumstances since the orders were made before the court will consider varying them.

Contravention applications

If a parent is not complying with parenting orders, and no new agreement can be reached, a parent can eFile a

contravention application. Parents should get legal advice before filing a contravention application.

A parent responding to a contravention application, can try to show they had a reasonable excuse for not complying with parenting orders. A reasonable excuse can include:

- believing, on reasonable grounds, that the actions constituting the contravention were necessary to protect the health or safety of a child; and
- the period of the contravention was not longer than was necessary to protect the health or safety of the child.

A judge will consider whether each parent has acted reasonably and will take into account the need to ensure a child's safety.

Family Court processes during COVID-19

In most cases, matters are being dealt with by phone or video conferencing, for example, by Microsoft Teams. Courts have been contacting lawyers/parties and giving them information about how to dial in. Some matters that are not deemed to be urgent have been administratively adjourned.

COVID-19 List

Special COVID-19 list – cases where there is an increased risk of family violence as a result of social restrictions will receive immediate attention and will be triaged by a dedicated registrar who will assess the needs of the case and allocate it to a judge to be heard within 72 hours. Will be dealt with via electronic means, for example, filing by email and hearings via Microsoft Teams. Will operate initially for three months.

Other matters suitable for the COVID-19 list will be:

- Supervised contact where a contact centre has been closed or a supervisor can't fulfil their role and no alternate arrangement can be agreed upon;
- Parties live in different States/Territories and children cannot travel between them due to border restrictions;
- Parties/children have tested positive for COVID-19 and cannot fulfil the parenting obligations due to sickness or risk of infection.

Local Court processes for AVO matters during COVID-19

The duration of provisional AVOs has been extended from 28 days up to 6 months. Provisional AVOs with no charges attached, will be listed on an AVO list day 3 months from the date of the order. Provisional AVOs with charges attached, will be listed with the charge matter and on the first return date, adjourned for 8 weeks.

Where matters are listed for mention, parties can appear in writing or by email. For example, a defendant could email the court and indicate they are consenting to the AVO without admissions or would like to contest the AVO.

Consent orders can be made in the absence of the parties. For example, where the defendant consents to the AVO sought by the Police. Where an AVO is contested, Police can serve evidence on the defendant by post or email. Protected Persons should not attend court unless they are giving evidence and should liaise with the Police before doing as they may be able to give evidence by video conferencing.

Private applications

If a person makes a private application, applications for ADVOs must be accepted for filing. The Registrar can refuse to accept applications for an APVO if they believe the application is frivolous, vexatious, has no reasonable prospect of succeeding or could be dealt with more appropriately by mediation. If a Protected Person wants the court to consider their private application urgently they should email the court and argue why it's urgent. If deemed urgent, the application can be dealt with by written submissions where parties consent.

If a private application for an AVO is accepted for filing, it is put before a Magistrate in Chambers to determine whether an interim AVO should be made and listed for a directions hearing in not less than 3 months' time. If a private application for an APVO is refused, reasons for refusal are given and any application for a review of the refusal is put before a Magistrate in Chambers.

Children's Court processes during COVID-19

If a child is removed by FACS, FACS needs to file an application for a care order within 3 days. Matters will be listed in hub locations, usually the next working day, but no later than 3 working days after filing.

At least 2 days before listing date the lawyer for the applicant (usually FACS) needs to contact other parties, including unrepresented parties, to propose directions/orders and

attempt to reach an agreement. The lawyer emails the court by 2pm before listing date and lets them know the names of the other lawyers, the directions/orders sought and whether parties agree on directions/orders.

The Court will commence an electronic directions list at 9.30am, unless otherwise advised. Where a consent position has been reached, all parties are excused from attending either in-person or by video conference. Court will make consent directions/orders as long as they agree they are in the best interests of the child or young person. If a party disputes the making of an order/direction, the court can determine the dispute based on written submissions after all parties have been given an opportunity to file written submissions.

Dispute Resolution Conferences will be held over the phone or by video conference. Hearings that were vacated will be relisted for a Readiness Hearing to see whether arrangements can be made to hear the matter in a safe manner. If it is not appropriate for a matter to proceed to hearing while social distancing restrictions are in place, it will be listed after September 2020.

When determining whether a hearing can proceed the Court will consider:

- The impact of further delays;
- The number of parties and whether they can participate by video conference;
- Whether, the type, and how many, witnesses are required for cross examination and whether this can be done by video conference;
- The type, quantity and disputes about the admissibility of evidence;
- The length of the hearing;
- Logistics; and
- Whether any party is likely to be prejudiced by conducting the hearing in the manner proposed.

Witnessing documents

Courts are generally accepting unsworn affidavits, but a person needs to affirm/swear a document before they can rely on it at hearing. Solicitors, JPs and other authorised witnesses, can now witness a person signing a document via video conferencing.

Renting

From 15 April 2020 there is an interim 60 day stop on landlords issuing termination notices or applying to NCAT for

eviction orders for rental arrears where a tenant is in financial hardship due to COVID-19. Financial hardship due to COVID-19 means one of the rent paying members of a household has:

- lost, or had a reduction in their job hours, or income, as a result of COVID-19; or
- had to stop working, or materially reduce their work hours, because they, another household member or someone they have carer's responsibilities for, was ill with COVID-19; or
- as a result of the above, the weekly household income has been reduced by at least 25%.

Landlords are required to negotiate a rent reduction with tenants in good faith in the first instance.

Only after the negotiations fail, and the 60 day stop on evictions has finished, can landlords can apply to NCAT for a termination order. Landlords now need to give 90 days' notice for a no grounds termination notice.

Refer clients to their local Tenants Advice and Advocacy Service for further advice <https://www.tenants.org.au/>

Employment rights

On 8 April 2020 the Fair Work Commission varied 99 awards providing:

- 2 weeks of unpaid pandemic leave; and
- the ability to take twice as much annual leave at half the normal pay if the employer agrees.
- The Fair Work Ombudsman can advise whether a person is covered by one of the relevant awards.
- Rules about being stood down.

Unpaid pandemic leave is available if a person can't work because:

- they are required to self-isolate by the government, medical authorities or on the advice of a medical practitioner; or
- measures are taken by the government or medical authorities in response to the pandemic.

Available to full time, part time and casual workers.

An employee should advise their employer in writing that they are taking unpaid pandemic leave and the reason they are taking it as soon as possible. This can be after the unpaid pandemic leave has started.

Employees don't need to use paid leave first. Leave must start before, but can end after, 30 June 2020.

Employees can take their annual leave at half pay and have double the time off. For example, take two weeks off and get paid 1 week's annual leave. Agreement must be in writing.

Must start before, but can end after, 30 June 2020.

Exception: teachers employed under the Teacher's Award (except teachers employed in early childhood services that operate at least 48 weeks a year) can't take annual leave at half pay.

Employees can be stood down if:

- an employer can show there has been a 'stoppage of work', and
- they are not responsible for the 'stoppage of work', and
- there is no 'useful work' for the employee to do.

There needs to be a connection between the COVID-19 pandemic and there not being any work. The employee still has their job, accrues entitlements and can return to work when there is work to do. In most cases employers don't have to pay employees, but employees may be entitled to the JobKeeper payment. See the factsheet produced by the Migrant Employment Legal Service for more information.

<https://mels.org.au/resources/>

Where can my client get help?

- Women's Legal Service NSW www.wlsnsw.org.au
- Women's Domestic Violence Court Advocacy Service 1800 938 227
- LawAccess www.lawaccess.nsw.gov.au
- Legal Aid NSW www.legalaid.nsw.gov.au
- Rent Choice Start Safely www.facs.nsw.gov.au
- DV line 1800 65 64 63
- Link2Home 1800 152 152
- Financial Rights Legal Service (financial counsellors) www.financialrights.org.au
- Centrelink www.servicesaustralia.gov.au
- Welfare Rights Centre www.welfarerightscentre.org.au
- Red Cross www.redcross.org.au/news-and-media/news/help-for-migrants-in-transition
- ATO (early access to super) www.ato.gov.au
- National Enquiry Centre (family courts) 1300 352 000
- Tenant's Union www.tenants.org.au
- Fair Work Ombudsman www.fairwork.gov.au
- Migrant Employment Legal Service www.mels.org.au (for migrants and temporary visa holders)