

Family law

This chapter has information about family law issues which may have affected you because of the February 2009 Victorian bushfires. It includes information on parenting, property and child support and where you can get help.

Parenting

I have not been able to obey a parenting order or parenting plan arrangement because of the bushfires. What should I do?

The law says that if a parent has a reasonable excuse for breaking the arrangements in a parenting order, this is acceptable and not in 'breach' (breaking the rules) of the order.

The court cannot 'enforce' (make you follow) a parenting plan. If you have not followed a parenting plan and you have no reasonable excuse, the other parent may apply to the court for a parenting order. The court may decide that you should have parenting orders in place, and not a parenting plan, to stop this happening in future. You would need to show the court how and why the bushfires stopped you from obeying the parenting plan or order.

Regardless, always try to help the children stay in touch with the other parent by telephone, email, skype or other ways. This is so their relationship can continue until the children are able to see the other parent in person.

The children seem really affected by the bushfires and do not want to spend as much time with the other parent. This breaks the arrangements set out in a parenting order or parenting plan. What should I do?

When children suffer trauma, they often regress (go backwards in their development). Often the children do not wish to be apart from the parent they spend most of their time with. Try to discuss how the children are feeling with the other parent, perhaps with the help of a child and family counsellor. This will help you both make decisions based on the needs of the children. A Family Relationship Centre can refer you to a counsellor. **See** 'Where to get help'.

If the other parent will not agree, you may need to change your parenting order or apply for an order if you have a parenting plan. You will need to show the court why the order needs to have the arrangements you would like. If you do not obey the arrangements set out in the order or plan in the meantime, you may need to defend your decision to the court.

See the section below 'I have not been able to obey a parenting order or parenting plan arrangements because of the bushfires. What should I do?' and get legal advice. **See** 'Where to get help' for legal services that can help you.

I want to move my children from the bushfire affected areas? Do I need the other parent's permission?

If you and the other parent have equal shared parental responsibility for your children, you should first try talking about the move with them. Try to come to agreement if possible.

If there are court orders or an agreement that says the children are to live with you and spend time with the other parent, you must talk about this with the other parent first.

If you have court orders, you would need to get them changed ('varied') to show the new arrangements. You can formalise your new agreement either by filing a 'consent' order with the court or by making a parenting plan (if your court orders were made on or after 1 July 2006). In most cases, you will need to try family dispute resolution first before you can apply to the court.

If you want to move to another area and this would make it hard for the children to see the other parent, get legal advice. Talk about this with the other parent before moving the children away. You should think about the children's best interests at all times.. If there is family violence or child abuse get legal advice and other help. **See** 'Where to get help'.

My situation has changed because of the bushfires. I want to change my parenting order or parenting plan because of this. How do I do this?

First, make sure your plans are in the best interests of the children. This is the law's main consideration. Try to then talk about the changes with the other parent and try to come to an agreement. If you cannot come to an agreement, you need to talk with a family dispute resolution practitioner. Contact a Family Relationship Centre on the Family Relationship Advice Line on 1800 050 321 or a Family Mediation Centre on 9556 5333 to find a practitioner near you.

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.

If the other parent does not agree to the changes and you want to change or make a parenting order, you must first try family dispute resolution. Sometimes you do not have to do this, for example, if there is family violence or in situations of urgency. Get legal advice if this applies to you. **See** 'Where to get help'.

My relatives or friends have died in the bushfires and I would like to have their children live with me. Is this possible?

It is understandable that you would like to care for the children at this time. The best interests of the child is the main consideration for the court when considering where a child should live.

If the children have lost their parents in the bushfires, the court will look at:

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

Think about how these issues might affect the children. If you decide to go ahead, get legal advice before taking any action to have the children live with you. **See** 'Where to get help' for legal services that can help you.

I am supposed to pay child support but I no longer earn an income because of the bushfires. What can I do?

The Child Support Agency has special arrangements for those affected by the bushfires. Visit the Child Support Agency website at www.csa.gov.au for more information on these arrangements or contact the Child Support Agency on 131 272 to see how those arrangements affect you. **See** 'Where to get help' for legal services that can help you make new arrangements.

Property

I am separated from my partner. I have paid most or all of the mortgage but the property is still in both names. If I get insurance money (or the house is re-built) how much is my former partner entitled to?

If you have not yet done a family law property settlement, the insurance money (or the new house) is still 'marital/relationship property', just as the old house was. This means your former partner may get part of it.

The portion your former partner gets depends on many things including the contributions you both made to the marriage or relationship. This includes financial contributions and non-financial contributions such as child minding, housekeeping or the upkeep of property. Your entitlements also include the needs each of you has for the future. It is very important that you get legal advice about this. **See** 'Where to get help'.

My house is being used as security against my former partner's property. Do I have to pay the debt on their property if their house burnt down or my house burnt down?

The law says the buildings on a property are only part of the property. The land itself has value of its own and it is your former partner's land for which your house is security.

Therefore, if your former partner still owes money on their land, you will still have to pay the debt, even if your own land (or theirs) is now worth less because of the bushfires. Generally, your former partner's mortgagee will have a mortgage over your property. It is only the value of that mortgage that would change if either your or your former partner's house burnt down.

You should get more legal advice about this. **See** 'Where to get help'.

My income has changed due to loss of business or employment because of the bushfires. Can I change my property settlement to take this into account?

A property settlement may be changed if it would be impractical for the order (or part of the order) to be carried out due to changes in your circumstances since the settlement was first made. However, this will depend on many things, including whether you get any compensation or insurance for the loss of your income.

Other information and help

I am worried about my next family law court date. It is difficult for me to go because of bushfire related issues. What can I do?

Call the Family Law Courts on 1300 352 000 and explain your situation. They can tell you about what you should do. Contact your lawyer if you have one, as soon as possible. They can explain how your case might be affected.

My family law court documents were destroyed or lost in the bushfires. What can I do?

You can get replacement copies of divorce certificates, court orders and other documents for free from the Family Law Courts registry. Call 1300 352 000 or visit www.familylawcourts.gov.au for more information (click on 'Forms > Family Law Courts forms' and select 'Document request form').

I moved address because of the bushfires. How can I make sure I get letters and documents from the Family Law Courts?

You can ask Australia Post to hold your mail at any post office or ask them to send your mail to another address. Australia Post are offering this service for free for bushfire affected households.

The Family Law Courts can send you free copies of any recent letters or information sent to you about your family law case. Call 1300 352 000 to arrange this. If you need to change your address for service of documents with the Family Law Courts, you need to lodge a Notice of Address for Service form. Call 1300 352 000 or visit the website www.familylawcourts.gov.au to download the form (click on 'Forms > Forms in alphabetical order').

Can I get help with child care and kindergarten hours or fees?

You may be able to get extra child care hours, fees and a kindergarten subsidy if you have been affected by the bushfires. Contact the Family Assistance Office on 136 150 and the Department of Education and Early Childhood Development's Early Childhood Services Information Line on 1300 731 947 or visit www.education.vic.gov.au/about/bushfires/financial.htm

Other useful Handbook chapters

See 'Property' and 'Relief'.

DISCLAIMER

The information contained in this chapter of the Bushfire Legal Help Handbook is intended to provide general information on legal topics, current at the time of first publication. The contents do not constitute legal advice, are not intended as a substitute for legal advice and should not be relied on as such. You should get legal advice in relation to your individual circumstances and any particular matters you may have.

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