

Allegations of Abuse and Parenting Arrangements

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Overview

1. Domestic Violence and Family Protection Act provisions
2. Family Law Act (parenting provisions)
3. Nexus between DVPA and FLA
4. Appropriate parenting arrangements
5. Where allegations arise:
 - a. No orders in place
 - b. Orders in effect
 - c. Proceedings on foot

How to advise clients generally?

- Safety
 - Provide or refer for safety-planning
 - Provide emergency contacts:
 - Police 000/local station
 - DV Connect 1800 811 811
- Grounds for orders – s37 DFVPA 2012
 - Relevant relationship (Division 3 DFVPA 2012)
 - Domestic violence (Division 2 DFVPA 2012)
 - Final orders: necessary or desirable s37(1)(c) DFVPA 2012)



How to advise clients about children?

- Including children on the order:
 - Basis:
 - s54 DFVPA 2012 – court must consider naming child
 - S53 DFVPA 2012 – court may name a child where necessary or desirable to protect the child from associated DV or being exposed to DV committed by the respondent.
 - Successful applications – unambiguous circumstances
 - Unsuccessful applications – “de facto” parenting arrangements



How to advise clients about children? ctd

- Conditions:
 - Standard conditions – s56 DFVPA 2012
 - Be of good behaviour
 - Not commit DV (or associated DV against a named person/child)
 - Other conditions – s57 DFVPA 2012, eg:
 - No approach within X metres of aggrieved and/or certain addresses
 - No contact
 - Ouster – ss63-64 DFVPA 2012
- Consider whether protection of aggrieved is sufficient to protect children



Whether or not there are current parenting orders:

- DFVPA 2012 – s62 – conditions limiting contact between parent and child *only to the extent necessary for child's safety, protection and well-being*
- “The exception”:

This condition does not apply to the extent that it is necessary for the parties to attend an agreed conference, counselling, mediation session, or when having contact with a child as set out in writing between the parties or in compliance with an order of a Court, or when having contact with a child authorised by a representative of the Department of Communities (Child Safety).

Where there are current parenting orders:

- DFVPA 2012 – Division 7, ss76-78:
 - Applicant must disclose family law order (s77 DFVPA 2012)
 - Court may consider family law order and revive, vary, discharge or suspend it under s68R Family Law Act 1975
- FLA 1975 – Part VII, Division 11, ss68N-T:
 - s68R orders expire when interim order stops being in force or after 21 days, whichever is earlier – s68T, FLA 1975
 - Family law court orders invalidate family violence orders to the extent of any inconsistency – s68Q, FLA 1975
 - Family law court must consider, specify and explain any inconsistency with family violence order – s68P, FLA 1975

How to advise clients generally about parenting?

- Child's best interests paramount: ss60CA; 60CC, FLA 1975
- Parental responsibility: ss61A-F; ss65DAC-DAE; s 65P, FLA 1975
 - equally shared or sole?
 - simple or prescriptive orders?
- Parenting arrangements: ss65M-NA, FLA 1975
 - "Live with" orders – shared care unlikely
 - "Spend time/communicate with" orders:
 - No orders
 - Orders for supervised time/communication



How to advise clients about parenting where there are allegations of abuse?

- First ascertain whether:
 - There are current orders and:
 - When were they made?
 - By consent or after a contested hearing?
 - Were the allegations (or similar) ventilated in previous proceedings?
 - There are current proceedings and the status:
 - Any interim orders?
 - Next court date?
 - ICL appointed?
 - Family Report prepared or pending?



No Orders

No Legal Obligation

Paramount: Childs Best Interests
(Safety)

Compulsory FDR (or Exemption)



Initiating Application/
Response and Notice of Risk
and Affidavit



1st Court Date-Interim Orders



Court Process to Final Orders
made by Consent/Judge

Orders

Comply with orders – or have a reasonable excuse

Paramount: Children's best interests (safety)

Compulsory family dispute resolution (or exemption)

Contravention Application

Application to vary orders

Apply

Application + affidavit
State outcome sought

Respond

No forms required
Must attend court

Registrar

Judge

Apply

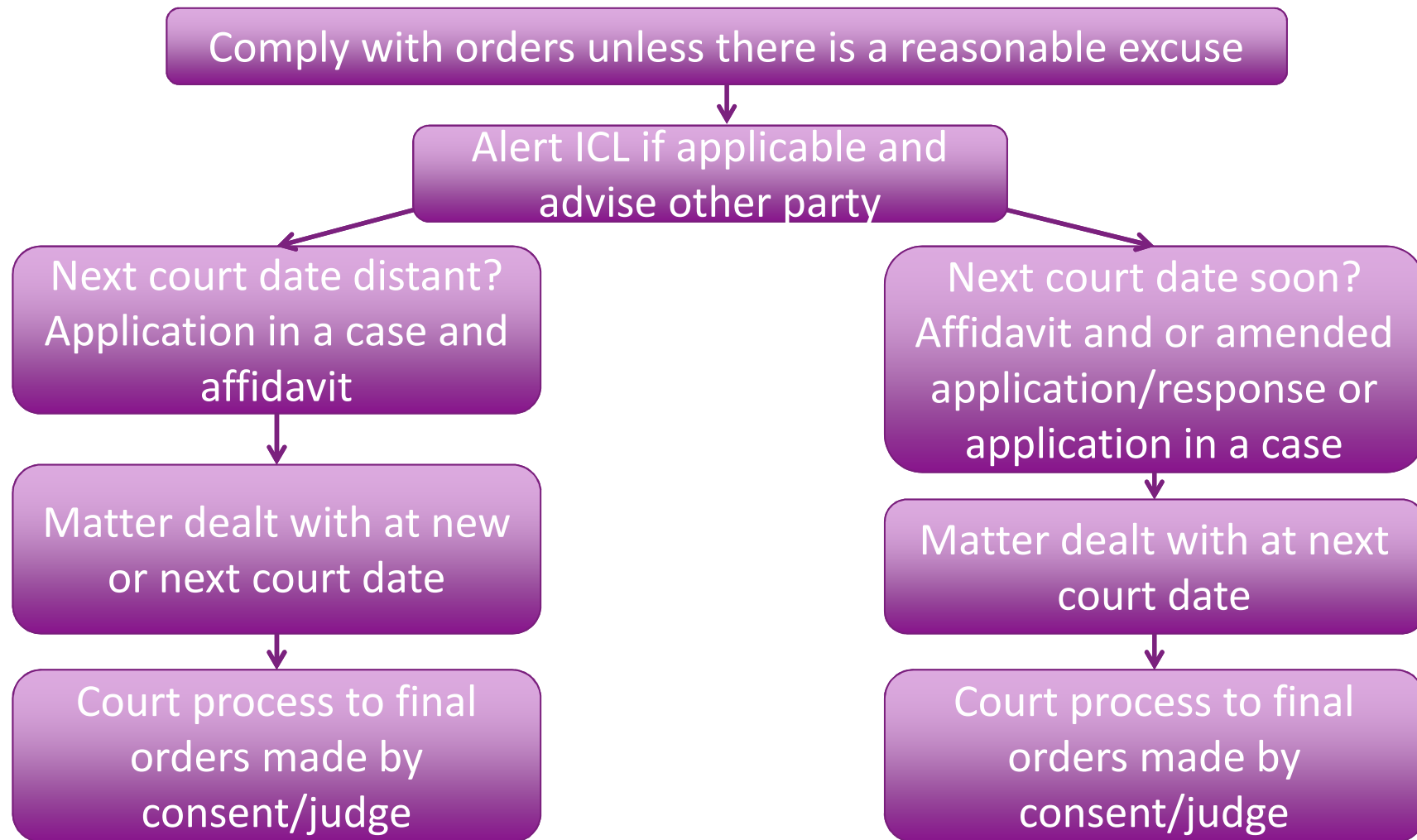
Initiating Application
Notice of Risk
Affidavit

Respond

Response
Notice of Risk
Affidavit

Court process for interim
(if sought) and final orders
made by consent or Judge

Pending Proceedings (Interim Order)



Obtaining evidence

- Client's affidavit – relevant and very specific
- Affidavits from others – not cheerleaders
- Reports – annex with CV to affidavit of report-writer
- Subpoenae – schools, hospitals, police, Child Safety: eg
"Documentation relating to the parties and children named below) including, but not limited to: (a) Child's files; (b) Family files; (c) Audio tapes, video tapes, photos; (d) Assessments, records and/or reports prepared by Department of Child Safety staff (including but not limited to, child welfare officers, support workers, psychiatrists, psychologists, counsellors, therapists (including, but not limited to, speech therapists and occupational therapists) education specialists, general practitioners and hospital staff; and (e) Any other departmental files, notes, memorandum, correspondence held by the department Held in relation to: (full names and DOBs for parties and children)."

Questions?

