

Related family law proceedings

Where the parties to protection order application proceedings are also engaged, or likely to be engaged, in family law proceedings, tensions or **inconsistencies** may arise between the purpose and effect of a protection order made by a court of summary jurisdiction and a parenting order made by the Family Court of Australia or Federal Circuit Court of Australia (called here ‘the Family Court’). On the one hand, the protection order may direct the perpetrator [Croucher 2014] to keep away from the victim and any protected children. On the other hand, the parenting order may stipulate that the protected children spend time with or live with the perpetrator. **In some circumstances it may be appropriate for magistrates to vary existing parenting or other orders under the Family Law Act.**

There may also be circumstances where, for example, in the absence of parenting orders, a victim obtains a protection order naming her children as protected people, and the perpetrator (the father of the children) subsequently applies to the Family Court for parenting orders so that he may have contact with his children otherwise disallowed under the protection order. Judicial officers should be aware when making protection orders naming children as protected people in these circumstances that there may be a considerable delay before parenting matters, including contact, can be dealt with by the Family Court, and that the new status quo established by the protection order may impact on the outcome of any subsequent parenting proceedings. Where the protection order is made with the consent of the parties (which is often the case [Gelb 2016]) judicial officers should ensure the parties are made aware of this potential impact, in particular where one or both parties are self-represented. In some Australian jurisdictions, judicial officers are required to include children as protected people on protection orders.

Parties are required to ensure that a copy of any protection order is filed with the Family Court when making an application for parenting orders; and if a protection order is in force the court must consider any relevant inferences that can be drawn from the protection order by taking into account the nature of the order, the circumstances in which the order was made, any evidence admitted in proceedings for the order, any findings made in the protection order proceedings and any other relevant **matter**. Where, however, a party withdraws their protection order application on the basis of undertakings given by the other party to the court; or a protection order is made by consent without admission; or the responding party makes a cross application resulting in mutual orders [ALRC/NSWLRC 2010], there may be no admission of fact capable of being relied upon by the Family Court in making a determination regarding the perpetration of domestic and family violence.