



MACARTHUR
Legal Centre
Supporting our community

FAMILY LAW MATTERS SERIES: PARENTING ARRANGEMENTS



Useful Contacts

- Macarthur Legal Centre can provide free legal advice and assistance.
Contact us on (02) 4628 2042.
- Contact the Department of Human Services on 1800 050 004.
- Contact Legal Aid on (02) 4628 2922 for free advice and representation.
- Contact the Family Relationship Centre, Campbelltown on (02) 4629 7000 for mediation.
- Visit the Federal Circuit and Family Court of Australia website <https://www.fcfcga.gov.au> for further information.

PARENTING

Under the *Family Law Act 1975* (CTH), children have “rights” and parents have “responsibilities”. When determining children’s issues, and parenting arrangements, **the best interests of the child** is the paramount consideration.

The *Family Law Act 1975* (CTH) defines parental responsibility as ***“all the duties, powers, responsibilities and authority by which, by law, parents have in relation to children”***.

This means that both parents automatically have parental responsibility for a child until that child turns 18 years old. If parents separate, parental responsibility does not automatically change – both parents can still make important decisions about the child’s life unless there is a Court Order stating otherwise.

The Court will assign parental responsibility based on what is in **the best interests of the child** and the particular circumstances of the case. A Court can make parental responsibility Orders which state that decision making is to be made **jointly** or **solely**.

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Sometimes, the Court might make an Order that there is to be joint decision making on some things, whilst on other things, just one person has decision making responsibility. **Joint** decision making means that both people who are to make joint decisions for the child are required to **consult each other** and make a **genuine effort** to reach an agreement regarding **major long-term issues** affecting the child. **Sole** parental responsibility means that one person can make some or all (as specified In Court Orders) of the major long-term decisions for a child **without** having to consult the other parent or anyone else.

Post Separation Parenting Arrangements

There are a variety of issues parents should consider post-separation, these might include:

- Where the child will live;
- Time the child spends with each parent and other people who are significant to the child (for example, grandparents or other extended family members);
- How and when the child will communicate with significant parties;
- How parents will communicate about “parenting matters” moving forward; and,
- Specific issues, such as: schooling, medical treatments, travel arrangements, etc.

There is no requirement for parents to seek legal intervention post-separation. In fact, the majority of separating couples are able to amicably decide on parenting arrangements.

Informal and Formal Arrangements

The *Family Law Act 1975* (CTH) provides for parenting agreements in the form of Parenting Plans and Parenting Orders (either by consent or Court Order). Parents can have either an informal or formal agreement, in respect to their parenting arrangements. Informal agreements can be verbal or written. Informal agreements **are not legally enforceable** but have the advantage of being flexible and responsive to the changing needs of children and parents. Formal agreements such as Consent Orders or Court Orders **are legally enforceable**.

Parenting Plans

A Parenting Plan is simply the parents’ agreement, in writing, which is signed and dated by both parents. Parenting Plans can be cancelled/varied by new written agreements (which are likewise signed and dated). Parenting Plans are **not legally enforceable**.

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The Court could, however, take a Parenting Plan into consideration, as evidence of the parenting arrangements, should the matter proceed to Court.

In addition, Parenting Plans can sometimes be used by parents as an informal way of making variations to previous Parenting Orders. Although the new Parenting Plan provisions will **not be legally enforceable**, they may be used as evidence of the current agreement if the matter did go back to Court.

Parenting Consent Orders

Parenting Orders, by Consent, are just the agreed parenting arrangements in a **legally binding form**. Parenting Consent Orders can be varied by further Consent Orders; an updating Parenting Plan (in some circumstances); or otherwise by a Court Order. Parties can apply for Consent Orders by filling in an *Application for Consent Orders*, together with their draft terms of settlement. The application must contain information about the children and arrangements. The application fee for Consent Orders is currently \$195. The Court will only sanction the Orders if they appear to be in **the best interests of the child/ren**.

Where parties cannot agree

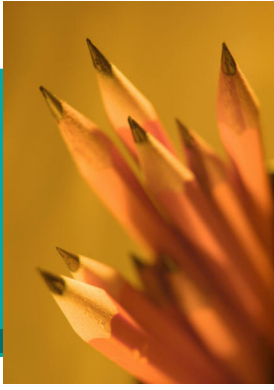
Where parents cannot agree about children's issues, and parenting arrangements, there are various options available. These include:

- Asking a family or friend to act as a neutral go-between;
- Formal Family Dispute Resolution (i.e. attendance at mediation);
- Solicitor-based negotiation; or,
- Court action (for example; urgent matters; matters involving family violence and/or abuse/neglect of children; or high conflict).

Where parents cannot agree about parenting arrangements, they can file an *Initiating Application*, with the Federal Circuit and Family Court of Australia, and a Judge will make a determination on the issue. This means that a third party, the Judge, will make decisions about what's in **the best interests of your child/ren**.

Parenting Orders **are legally enforceable**. Where a party fails to comply with the Orders, without reasonable excuse (for example, an alternate agreement), then the other party can file a *Contravention Application*. If the breach is substantiated, without reasonable excuse, the Court may either vary the Orders; fine the breaching parent; or possibly order a term of imprisonment.

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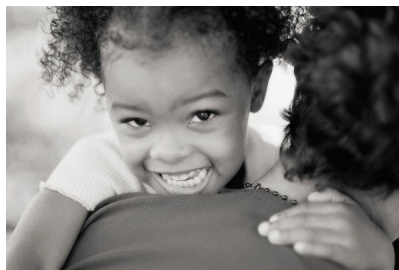
The Best Interests of the Child

When determining the best interests of the child/ren the primary considerations, per section 60CC of the *Family Law Act 1975* (CTH), the Court must consider:

- What arrangements would promote safety (including safety from being exposed or subjected to family violence, abuse or neglect) of the child and each person who has care of the child;
- Any views expressed by the child;
- The developmental, psychological, emotional and cultural needs of the child;
- The capacity of each person who has, or is proposed to have, parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
- The benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so; and
- Anything else that is relevant to the particular circumstances of the child.

If a child is Aboriginal or Torres Strait Islander, the Court must also consider the child's right to enjoy their Aboriginal or Torres Strait Islander culture, by having the support, opportunity and encouragement necessary:

- To connect with, and maintain their connection with members of their family and with their community, culture, country and language; and
- To explore the full extent of that culture, consistent with the child's age, developmental level and the child's views; and
- To develop a positive appreciation of that culture; and
- The likely impact any proposed parenting order will have on these rights.



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