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Parenting Arrangements

If you and your former partner have any children under the age of 18, including non-biological children, you will likely need to make arrangements for their care, welfare and development following your separation. This factsheet provides information about parenting arrangements.

What are parenting arrangements?

Parenting arrangements are arrangements for the care of children. They can include arrangements about where children will live, how children will spend time with people, as well as restrictions around children, such as drugs and alcohol use.

Best interests of the child – the core concept

When discussing parenting arrangements, the Family Law Act 1975 (Cth) (**the Family Law Act**) is focused on the “best interests” of the child – this means that when making arrangements for children, people should always ensure that the arrangements are in the child’s best interest.

A child’s best interests will be different for each child, however, the two primary considerations are:

- The benefit to the child of having a meaningful relationship with their parents; and
- The need to protect the child from harm, including domestic and family violence.

Parental responsibility

Parental responsibility is all of the duties, responsibilities, and authority that parents have for their child – it means long-term decision-making about and responsibility for the child’s care and welfare, such as decisions about schooling and health.

The Family Law Act says that there is a presumption of “equal shared parental responsibility” between parents. The presumption means that both parents must be involved in long-term decision-making, but it does not mean that a child must spend equal time with each parent. The presumption will sometimes not apply, including where there is domestic and family violence.

Making parenting arrangements

You can make parenting arrangements in lots of different ways – there is no “right way”.

Some examples of parenting arrangements are verbal agreements, written agreements (called parenting plans), agreements made through mediation, or making an application to the family law courts for parenting orders. You can make parenting arrangements as a parent, and also as a person involved in the parenting of a child, including an aunt, grandparent, or guardian.

Mediation

Mediation is a way for parties to discuss parenting arrangements in a neutral setting. In the family law courts, mediation is known as Family Dispute Resolution (FDR).

FDR is a process where people come together to discuss issues in the presence of a mediator. The mediator does not provide legal advice, but helps the participants work through their issues to try to reach an agreement focused on the best interests of the child.

The Family Law Act says that you must participate or try to participate in FDR before can make an application to the family law courts for parenting orders, unless an exception applies. Examples of exceptions are where there has been domestic and family violence or if there is urgency, such as the unauthorised removal of a child.

We didn’t agree at FDR – what’s next?

At the end of FDR, you may reach an agreement (such as a parenting plan) or you may be unable to agree about parenting arrangements. If you didn’t agree at FDR, you will receive a certificate (called a section 60I certificate).

Once you have received a certificate, you will be able to make an application to the family law courts for parenting arrangements within the next 12 months. This is a serious step – once you make your application, you will be in the family law courts until either an agreement is made or the Court makes a decision.

You should seek legal advice before making an application to the family law courts, as applications can be time consuming, expensive and stressful.

A note about domestic and family violence

If there is or has been domestic and family violence during your relationship – including emotional, psychological, sexual, financial, and physical violence – it will be an important consideration when making parenting arrangements. Domestic and family violence can affect whether FDR is appropriate, as well as considerations about the best interests of the child and equal parental shared responsibility.

If you have or are experiencing domestic and family violence, you should seek legal advice.





We don't have parenting arrangements, but I want to travel with my child – can I do this?

If you don't have parenting arrangements and want to travel with your child, including interstate or overseas, you should seek written permission from your co-parent before travelling – if you don't get permission, your co-parent may make an application to the family law courts for a recovery order, which is an urgent order made by the Court requiring a child to be returned.

You should seek legal advice before travelling with your child, as well as if you are thinking about relocating somewhere else to live.

We have parenting arrangements, but my former partner ignores them – what can I do?

If you have made parenting arrangements and one person is not following them, you can:

- Seek legal advice about non-compliance;
- Discuss the issues privately with the other person and try and make a new agreement;
- Participate in FDR; or
- If you have a section 60I certificate or there are urgent circumstances, apply to the family law courts for parenting orders after receiving legal advice.

We have parenting arrangements, but they're not right for my child anymore – what can I do?

A parenting plan or parenting order can be changed by a new parenting plan and/or parenting order – if something doesn't work, you can make a new agreement that reflects the best interests of your child. If you have a parenting order you are seeking to change, you should seek legal advice.

Commonly occurring issues:

You can also seek legal advice from TEWLS and other family lawyers about a number of common parenting issues, including:

- Passports for children
- Recovery of children who have been relocated
- Change of name of children
- Views of children
- Child support
- Family reports required by the family law courts
- Independent Children's Lawyers
- Child abuse

Parenting Plans vs Parenting Orders – which is best for my children?

Parenting arrangements can be general or specific – they can include agreement about who the children will live with, when and how the other person will spend time with the children, how the children will spend holidays and special occasions, and any necessary restrictions on the other person to ensure the children's safety.

Here are examples of wording in a parenting plan or parenting order:

The Children are to live with the Mother between Mondays and Friday, and with the Father between Saturday and Sunday on a weekly basis.

The Children are to live with the Mother and spend time with the Father as agreed between the parents, but failing agreement, each Tuesday and Friday between 3:00pm and 7:00pm.

To confirm parenting arrangements, people will usually choose from two options – plans or orders.

Parenting Plan	Parenting Order
- Written agreement	- Written agreement
- Agreement between the parties (signed and dated) – can be made with or without FDR and with or without lawyers	- Agreement between the parties (consent orders) or parenting orders made by the Judge – made by lodging an application to the family law courts
- Not legally binding and enforceable – serves as record of the agreement	- Legally binding and enforceable – this means that is able to be enforced by Police or the family law courts
- No cost (unless fees payable to a private solicitor)	- Application fees when applying to the family law courts
- Can be overridden by new parenting plan or parenting order	- Can be overridden by new parenting plan or parenting order

Do you need legal advice or information? You can contact TEWLS for a free appointment

Phone: 1800 234 441 or (08) 8982 3000 | Email: admin@tewls.org.au
 Website: www.tewls.org.au | Address: 2/17 Lindsay Street Darwin

