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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.

## 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 to protect children, such as arrangements restricting drug 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, you should always ensure that any arrangements are in your child/children's best interests.

While a child's best interests will be different for each child, the two (2) primary considerations are:

1. The benefit to the child of having a meaningful relationship with their parents; and
2. The need to protect the child from harm, including domestic, family and sexual violence (**DFSV**).

## Parental responsibility

Parental responsibility is all of the duties, responsibilities, and authority that parents have for their child/children – it means long-term decision-making about and responsibility for a 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 DFSV. When the presumption does not apply that is called 'sole parental responsibility'.

## Making parenting arrangements

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

Some examples of parenting arrangements include verbal agreements, written agreements (called 'parenting plans'), agreements made through mediation, or parenting orders made by applying to the Federal Circuit and Family Court of Australia (the **Court**). 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 and safe setting. In the Court, 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/children.

The Family Law Act says that you must participate or try to participate in FDR before you can make an application to the Court for parenting orders, unless an exception applies. An example of an exception is when there has been DFSV or if there is urgency, such as the unauthorised removal of a child. You should seek legal advice about whether an exception applies in your circumstances.

## 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 don't agree at FDR, you will receive a certificate called a section 60I certificate (**s60I certificate**).

Once you have received a s60I certificate, you will be able to make an application to the Court for parenting arrangements. The s60I certificate expires after 12 months. This is a serious step – once you make your application, you will be in the Court until either an agreement is made by you and your co-parent or the Court decides for you.

You should seek legal advice before making an application to the Court – court proceedings can be time consuming, expensive, and stressful.

## A note about domestic, family and sexual violence

If there is or has been DFSV during your relationship – including emotional, psychological, sexual, financial, controlling, and physical violence – it will be an important consideration when making parenting arrangements. DFSV 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 DFSV, 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 Court for a 'recovery order', which is an urgent order made by the Court requiring a child to be returned to the location of the parent who made the application.

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 a parenting plan or a parenting order, but my co-parent ignores it – what can I do?

If you have made a parenting plan or a parenting order and one person is not following it, you can:

- Discuss the issues privately with the other person and try and make a new agreement;
- Seek legal advice about non-compliance;
- Participate in FDR; or
- If you have a parenting plan and a s60I certificate, apply to the Court for parenting orders after receiving legal advice.
- If you have a parenting order, a s60I certificate and there has been a significant change in circumstances, apply to the Court 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 seek legal advice from TEWLS and other family lawyers about other common parenting issues, including:

- Passports for children;
- Recovery of children who have been taken or relocated;
- Changing a child's name;
- Views of children;
- Child support;
- Family reports required by the Court;
- Independent Children's Lawyers;
- Child abuse; and
- Children's participation in sporting, religious or cultural events.

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

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

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

*The Child is 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 (2) options – parenting plans or parenting 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 Court – made by lodging an application to the Court
• Not legally binding and enforceable – serves as record of the agreement	• Legally binding and enforceable – this means able to be enforced by Police or the Court
• No cost (unless fees payable to a private solicitor)	• Application fees when applying to the Court
• 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 assistance? You can contact TEWLS for a free appointment.

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