



Family law—Parenting arrangements for children after separation

This factsheet explains key parenting concepts in Australian family law. The information provided in this fact sheet is not legal advice. If you require legal advice and support services about a family law matter please see the **Family Law Services and Support Fact Sheet** on the Attorney-General's Department's website.

KEY TERMS

Parental responsibility means all the duties, powers, responsibilities and authority that parents have in relation to their child. Each parent of a child under 18 has parental responsibility. Only a court order can change or remove parental responsibility.

Parenting arrangements are arrangements about how parents will care for children after separation. These can be informal arrangements or formal agreements such as a **parenting plan** or a **parenting order**.

A **parenting plan** is a written record of an agreement between the parents about the care of the children that is also signed and dated. It cannot be enforced by a court, but a court may consider the plan when making parenting orders.

A **parenting order** is a court order that is legally enforceable. Parents who are able to agree parenting arrangements and want to make them legally binding can apply to the court for consent orders. Parenting orders will usually address who will make major long-term decisions for the child and how much time a child spends with each parent.

Use the **Law Term Finder** for online help with legal terms: lawtermfinder.mq.edu.au.

THE LAW IN AUSTRALIA

The *Family Law Act 1975* (Family Law Act) is the law in Australia for resolving arrangements for children and property following a relationship breakdown. The Family Law Act identifies the different types of parenting arrangements that parents can enter into when separated, and what parents should consider when deciding parenting arrangements for their children.

In Western Australia, the Family Law Act only applies to children of married or previously married parents. A different law—the *Family Court Act 1997* (WA)—applies for children's matters where the child's parents were never married to each other.

Separating couples are encouraged to resolve issues themselves without going to court, where it is safe to do so. The Family Law Act is gender neutral and focuses on the **rights and needs of children** and the **responsibilities that each parent** has towards their children, rather than on parental rights.

Child protection is mainly the responsibility of state and territory governments. Relevant child welfare and law enforcement agencies investigate the safety and wellbeing of a child. Under the Family Law Act, it is mandatory for the family law courts to report suspected or alleged child abuse to state and territory child welfare authorities. If you have concerns about a child's safety and wellbeing see the **Family Relationships Online website** for information on what to do: familyrelationships.gov.au/parenting/childrens-safety.

Child support is an amount of money paid between separated parents to help with the cost of raising their children. In some situations, child support may be paid by one or both parents to another person who is looking after the children, such as a grandparent, legal guardian or other family member. Services Australia is responsible for the Child Support Scheme and can help you manage and apply for child support. For more information see the **Services Australia website**: servicesaustralia.gov.au/separated-parents.

BEST INTERESTS OF THE CHILD

The 'best interests of the child' is the most important thing to think about

when making parenting arrangements. This includes the need to keep children safe from harm, meeting the child's developmental needs, and the benefit to the child of having a relationship with each of their parents and other people significant to them.

How do I decide the best parenting arrangements for my child?

When making a parenting plan or seeking parenting orders, parents should consider issues such as:

- the safety of the child
- the age of the child
- who is best placed to provide day-to-day care
- educational needs
- special needs the child may have e.g. medical and schooling
- practical considerations e.g. around accommodation, transport and expenses
- cultural needs of the child, especially where the child is Aboriginal or Torres Strait Islander
- the child's own views or opinions.

Parents may also wish to consider how to include flexibility in the plan – particularly as children get older, and their interests and needs change. Parenting arrangements may need to change and adapt over time.



DO I HAVE TO GO TO COURT?

No. Where it is safe to do so, separating couples are encouraged to resolve issues themselves without going to court. This is more likely to save time, money and stress. Parents are encouraged to seek the support of family relationship services to help resolve family law issues. The assistance of family relationship services and family dispute resolution may be sought at any stage, including prior to separation, after separation, and before, during or after court proceedings and court orders.

Parenting agreements can be informal, such as an oral agreement, or a formal written parenting plan. It is useful to have a signed and dated written record of an agreement between parents about the care of the child. There is no required format for a parenting plan and making a parenting plan is cheaper and easier than going to a family law court. However, it is not a legally enforceable agreement.

How do I get a legally enforceable agreement?

If you have agreed parenting arrangements but want them to be legally enforceable, you can apply to the court for **consent orders**. These are parenting orders made by the court with the consent of all the parties. This means you do not have to go to trial.

What if we don't agree about parenting arrangements?

When separating parents are not able to agree to parenting arrangements between themselves, before they can apply to a court to hear their matter, they are required to make a genuine effort at family dispute resolution, unless an exception applies. Exceptions include where there are risks due to the presence of family violence that cannot be safely managed, or in circumstances of child abuse or urgency.

The main family law courts are the Federal Circuit and Family Court of Australia or, for those in Western Australia – the Family Court of Western Australia.

HELP WITH PARENTING PLANS

amica is a simple, affordable and quick online tool that can assist parents to develop a parenting agreement or parenting plan. Visit amica.gov.au for more information.

Information about parenting plans and family dispute resolution near you is available from the **Family Relationship Advice Line**. You can contact the Advice Line by calling **1800 050 321**. It is available from 8am to 8pm on Mondays to Fridays and 10am to 4pm on Saturdays (except national public holidays). Visit the **Family Relationships Online website** for more information: familyrelationships.gov.au/parenting.

HELP WITH PARENTING ORDERS

The **Parenting Orders—what you need to know handbook** is a practical resource to assist parents and legal practitioners with drafting parenting orders, including consent orders: ag.gov.au/families-and-marriage/publications/parenting-orders-what-you-need-know

Applying for parenting orders in the **Federal Circuit and Family Court of Australia**: fcfcoa.gov.au/hdi/apply-parenting-orders

Applying for parenting orders in the **Family Court of Western Australia**: familycourt.wa.gov.au/P/parenting_orders.aspx.

IF YOU HAVE TO GO TO COURT TO GET A PARENTING ORDER

Who can apply for a parenting order?

A parent, grandparent, or anyone else concerned with the care, welfare or development of a child may seek a parenting order from a court.

What does the court consider?

The court will consider 6 factors to decide what parenting arrangements will be in the best interests of the child:

1. the safety of the child and caregivers
2. the child's views
3. the developmental, psychological, emotional and cultural needs of the child
4. the capacity of each caregiver to provide for those needs
5. the benefit to the child of having a relationship with their parents, and other significant people
6. anything else that is relevant.

If the court is making orders about an Aboriginal and/or Torres Strait Islander child, the court will also consider how parenting arrangements will help that child to experience their Aboriginal and Torres Strait Islander culture.

Can my child express their views?

Children can express their views on matters that affect them in a number of ways. The court may appoint an independent children's lawyer, a court child expert or other private expert (such as a social worker or psychologist appointed on behalf of or by both parties), who may meet with the child and provide a report to the court.

Can I challenge a parenting order?

If you are dissatisfied with a court decision, the only way to challenge that decision is through an appeal. Further information is available on the Federal Circuit and Family Court of Australia website: fcfcoa.gov.au/fl/appeals and the Family Court of Western Australia website: familycourt.wa.gov.au/A/appeals.aspx.

What do I do if the other party will not stop filing applications to the court?

Courts have the power to make 'harmful proceedings orders' to prevent a litigant from filing and serving new applications without first obtaining leave from the court. These orders may be made on the court's own initiative or on application by a party to proceedings, at any time while the proceedings are on foot. The court needs to be satisfied that there are reasonable grounds to believe that further proceedings would be harmful, which may include psychological harm or oppression, major mental distress, behaviour which causes a detrimental effect on the other party's capacity to care for a child, or financial harm.



CHANGING A PARENTING ORDER

If your circumstances change after the original court orders are made and both parents agree to the changes, you can make a parenting plan (see 'Key Terms' above). Although a parenting plan is not legally enforceable, it can change the arrangements that have been provided for in court orders. The parenting plan would be considered by the court if a matter comes before it in the future.

If you cannot agree, you can apply to the court to seek to **vary** the existing parenting orders. You must satisfy the court that there has been a change in circumstance since the original orders were made. You may also need to undergo family dispute resolution before the court will hear your matter.

FIND MORE INFORMATION

The website of the Federal Circuit and Family Court of Australia at www.fcfcoa.gov.au/fl contains useful information to help people going through separation or who have family law matters before the court, including:

- The **appeals process**: fcfcoa.gov.au/fl/appeals
- Reviewing **registrar decisions**: fcfcoa.gov.au/fl/forms/app-review
- **Varying parenting orders**: fcfcoa.gov.au/fl/children/changing-arrangements
- **Enforcing parenting orders**: fcfcoa.gov.au/fl/children/compliance-enforcement
- The **National Contravention List**: fcfcoa.gov.au/fl/national-contravention-list

For those in Western Australia, visit the website of the Family Court of Western Australia: familycourt.wa.gov.au.

WHAT TO DO IF SOMEONE DOES NOT FOLLOW A PARENTING ORDER

When someone has intentionally failed to comply with an order, or has made no reasonable attempt to comply with an order, then you can: seek legal advice, attend family dispute resolution, or apply to the court to seek compliance, punishment or another consequence for contravening (breaching) the order. As family law matters are civil and not criminal proceedings, the court must first receive a contravention application from a party to enforce an order. The police have no legal power to enforce a parenting order unless they are specifically directed by the court. In contravention proceedings, the court will consider the best interests of the child.

Under a contravention application the court has the power to order a range of remedies. Remedies include 'make up' contact (such as another weekend) where contact has been missed through a breach of an order; a costs order; or even punishment by way of a fine or imprisonment where there is either a series of breaches or a serious disregard of court orders. Punishing a parent who has breached a court order may not always be in the best interests of the child or children involved.

The Federal Circuit and Family Court of Australia seeks to ensure that breaches of orders are dealt with quickly, safely and cost-effectively. The National Contravention List in the Federal Circuit and Family Court of Australia enables contravention applications to be first considered by a Contravention Registrar (an officer of the court) within 14 days of filing. If matters are not able to be resolved with the assistance of the Contravention Registrar, and a court hearing is required, matters will be prioritised according to the particular circumstances of the case.

OTHER ENQUIRIES AND FREQUENTLY ASKED QUESTIONS

Visit the Federal Circuit and Family Court of Australia enquiries hub for frequently asked questions or to submit an enquiry: fcfcoa.gov.au/enquiries-hub. If your matter is urgent or requires time critical intervention call **1300 352 000**. Visit fcfcoa.gov.au/contact-us for more options to contact the Federal Circuit and Family Court of Australia.

For residents of Western Australia, visit the website of the Family Court of Western Australia at familycourt.wa.gov.au. Contact the Family Court of Western Australia by calling **(08) 9224 8222** (8am to 5pm Monday to Friday) or visit familycourt.wa.gov.au/_misc/contactus.aspx.