Making arrangements for children

This infosheet has information to help if you are separating and are working out arrangements for your child with your ex-partner. It has practical tips and information about family law in Australia.

Safety

Ensuring the safety of a child is an important consideration of the Family Court in all cases.

Family law in Australia focuses on ensuring that the best interests of the child are met, including by ensuring their safety.

You should get legal advice if there has been abuse or family violence in your relationship with your ex-partner or something has happened that has made you worried about your child's safety or your safety.

Supporting children

Separation is an emotionally difficult time for families. There are some things you can do to help support your child during this difficult time including:

- explaining to your child in clear and simple language that is appropriate for their age, the changes that are happening in their family,
- making sure you don't involve your child in any disagreements you have with your ex-partner,
- remembering that you and your ex-partner are the parents of your child for the rest of their lives, and
- focusing on the needs of your child when working out arrangements with your ex-partner.

Best interests of children

When working out arrangements for your child after separation, it is important for you and your ex-partner to focus on what arrangements will be in their best interests.

The term "best interests of the child" has a special meaning in family law. The law requires the court to take into account a number of considerations when deciding what is in a child's best interests.

From 6 May 2024, there will be changes to the law about what the court is required to take into account when deciding what arrangements are in the best interests of a child. These changes will apply only in cases where parents were married.

The court will take six (6) considerations into account when deciding what arrangements are in the best interests of a child. There will be an extra consideration for Aboriginal and Torres Strait Islander children.

It is expected that these changes will also apply in cases where parents were in a de facto relationship in the near future.

Ensuring the safety of a child will continue to be an important consideration in all cases.

For more information on the current best interest considerations and the new considerations, see the infosheet, Best interests of children.

What types of things do my ex-partner and I need to work out?

Some things to talk to your ex-partner about when working out arrangements for your child include:

- how decisions about your child will be made,
- who your child will live with and the time they will spend with you and your ex-partner,
- arrangements for your child during the week, weekends and school holidays,
- arrangements for special occasions which are important to your family, such as Christmas, Easter, and birthdays,
- the time your child will spend with other important people in their lives (for example, grandparents),
- how your child will communicate with you when they are in your ex-partner's care and with your ex-partner when they are in your care (for example, by telephone or video chat), and
- a plan for how you will work out changes to the arrangements in the future when needed – such as going to Family Dispute Resolution (mediation).

Parental responsibility

Parental responsibility is the legal term used in family law to describe the responsibility parents have to care for their child and the power parents have to make decisions for their child. For example, decisions about where their child lives, where they go to school, their religious and culture upbringing and whether they have a medical procedure.

Parents have parental responsbility for their child until they are 18 years old unless an order is made by the court removing it.

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Currently there is a legal presumption in family law that it is in the best interests of a child for their parents to share parental responsibility. A legal presumption means the law assumes that this is best for a child in most cases. The legal presumption does not apply in cases where there has been family violence or abuse or where the court decides it would not be in the best interests of the child.

From 6 May 2024, in cases where parents were married, this legal presumption will no longer apply. It will continue to apply in cases where parents were in a de facto relationship. However it is expected that in the future, the changes will also apply in cases where parents were in a de facto relationship.

Who can make decisions if there are no court orders?

If there are no orders about parental responsibility for a child, parents don't legally have to make joint decisions about major long-term issues for their child. However, parents are encouraged to talk to each other and make joint decisions about their child, if it is safe to do so.

Who can make decisions if there are court orders?

If there are court orders, parents must follow what the orders say. For example, if there is an order which says the parents have shared parental responsibility for the children, the parents are legally required to consult with each other and reach agreement about major long-term issues.

Is equal shared parental responsibility and shared care the same thing?

No, equal shared parental responsibility and shared care are not the same thing. Equal shared parental responsibility is about sharing making major long-term decisions about a child. Shared care is a common term used in family law to describe a child spending equal time with each of their parents.

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For more information about parental responsibility including what a major long-term issue is, see the video and fact sheet Parental responsibility.

Shared care

Shared care (equal time) is an arrangement the court may order, if it decides this is in the best interests of a child.

Currently the law says that if the court decides it is in a child's best interests for their parents to have equal shared parental responsibility, the court must consider making an order for shared care.

The court must consider the following factors when deciding whether to make an order for shared care:

- whether it would be in the best interests of the child, and
- whether it would be reasonably practicable (the court will look at practical things such as parents work hours and how far apart they live).

If the court doesn't order shared care, it must consider making an order for the child to spend substantial and significant time with the parent they don't live with. Substantial and significant time means time both on weekends and mid-week.

From 6 May, in cases where parents were married, the legal presumption about equal shared parental responsibility will no longer apply. This means the court will no longer be required to consider making an order for shared care or substantial and significant time.

However, the court can still make an order for shared care or substantial and significant time, if it decides this would be in the best interests of the child.

In all cases, regardless of whether parents were married or in a de facto relationship, the court will only order shared care if it decides this is in the best interests of the child.

Substantial and significant time

Substantial and significant time is an arrangement where a child lives mainly with one parent and spends time with the other parent on weekends as well as mid-week and holidays.

A substantial and significant time arrangement is one which allows the parent to be involved in their child's everyday routine, occasions and events of special importance to the child and parent. For example, sports days, school concerts, birthdays, Mother's Day and Father's Day.

The court, when deciding whether to order substantial and significant time, must look at whether it would be in the child's best interests and whether it would be reasonably practicable.

What practical things do I need to think about?

Arrangements should be realistic, practical and workable for everyone and be focused on the best interests of the child.

As well as the best interest considerations (see the infosheet, Best interests of children), it is important to think about practical things such as:

- the age of the child,
- how far apart you and your ex-partner live,
- how far you and your ex-partner live from your child's day care or school,
- work commitments and study, and
- whether you and your ex-partner are able to talk to each other and work out any issues that may arise.

How can I work out arrangements with my ex-partner?

The first step is to try and talk to your ex-partner about what arrangements you would like to put in place for your child.

If you feel safe and comfortable talking to your ex-partner, consider setting up a meeting to talk through the issues together.

Another approach is to send an e-mail setting out what you would like to happen.

When discussing issues with your ex-partner, either in person or in writing, try to keep your communication short, to-the-point and polite.

What help can I get to work out arrangements with my ex-partner?

Family Dispute Resolution (FDR) may be able to help you and your ex-partner work out arrangements for your child.

FDR is a type of mediation that involves people meeting together to try to reach an agreement with help from an FDR Practitioner.

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An FDR Practitioner is someone who has had special training to support people working out arrangements for their child and help them keep focused on the best interests of the child. An FDR Practitioner is independent. This means they are not on your side or the side of your ex-partner.

For information about FDR services and other separation services that may be able to help, see the infosheet, Support for separating parents.

Do I have to go to Family Dispute Resolution?

In most cases the law requires you to try Family Dispute Resolution (FDR) before starting a case in the Family Court for orders about a child.

There are some exceptions to this requirement including if:

- the case is urgent,
- there has been family violence or child abuse or there is risk of these,
- the application is for contravention (breach) of parenting orders made within the last 12 months, or
- a parent is unable to effectively take part (for example, due to a disability or living somewhere remote).

What options do I have if I reach an agreement with my ex-partner?

If you reach an agreement with your ex-partner about arrangements for your child, you can have:

- an informal agreement,
- a parenting plan,
- consent orders – you can formalise your agreement by filing an application for consent orders with the Family Court of WA.

It is recommended you seek legal advice about your individual situation and the best option for you and your child before you start negotiating with your ex-partner or attend FDR. You should also get legal advice before signing any documents.

Informal agreement

There is no legal requirement to put a formal arrangement in place for your child after separation.

If you and your ex-partner are able to work out arrangements for your child and communicate well, you may not need a formal agreement.

Parenting plan

A parenting plan is an agreement that is:

- between parents, and
- in writing, and
- signed and dated.

A parenting plan does not need to be registered with the court. A parenting plan is not legally binding and cannot be enforced by the court if one of the parents doesn't follow the agreement.

A parenting plan can be useful when parents are able to agree on arrangements for their child and want a clear record of their agreement.

A parenting plan is flexible as it can be easily changed and work well if parents follow the agreement.

Consent orders

Consent orders are legally binding. If a parent doesn't follow the orders, they can be enforced by the court.

To get consent orders, an application needs to be made to the Family Court of WA. This is done by completing, signing and lodging the following:

- Application - Consent Orders (Form 11), and
- Draft consent orders.

The application form can be found on the Family Court of WA website www.familycourt.wa.gov.au.

If the court accepts the draft consent orders, the agreement becomes legally binding.

Can consent orders be easily changed?

Once consent orders have been made, they can be hard to change unless you and your ex-partner agree. If you and your ex-partner don't agree to a change, you will usually need to follow what the orders say. The parent who wants to make a change would need to make an application to the court to ask to change the consent orders.

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Sometimes a parent might refuse to allow a child to spend time or communicate with their ex-partner. If there are orders setting out care arrangements for the child, these actions are only acceptable if there are real grounds for believing the health and safety of a person, including the child or the parent refusing to return the child, would be at risk.

If you are thinking about refusing time or communication because you are worried about your safety or your child's safety, you should get urgent legal advice.

Supporting your child

It is important that both you and your ex-partner support your child by doing everything you can to ensure the arrangements work well. Some examples of things parents can do to help arrangements work well, include:

- making sure your child is made available and returned at the agreed times,
- making sure your child is dressed and ready to go and has everything they need,
- speaking positively about your ex-partner and about the time your child will spend with them, and
- sharing information about your child's routine in your home and care needs (for example, your bedtime routine and medication your child needs to take).

LEGAL AID WA OFFICES

Infoline: 1300 650 579

Translating & Interpreting Service:
131 450

Website/InfoChat:
www.legalaid.wa.gov.au

National Relay Service: 133 677
(for hearing and speech impaired)

Perth Office
32 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Midwest & Gascoyne Office
Unit 8, The Boardwalk, 273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

West Kimberley Office
Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

Great Southern Office
Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Goldfields Office
Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

East Kimberley Office
98 Konkerberry Drive,
Kununurra, WA 6743
(08) 9166 5800

Southwest Office
7th Floor, Bunbury Tower, 61 Victoria Street,
Bunbury, WA 6230
(08) 9721 2277

Pilbara Office
28 Throssell Road, South Hedland,
WA 6722
(08) 9172 3733

Indian Ocean Office
Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
(08) 9164 7529

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