



When Separating

Making arrangements for your child

This is a guide to help you and your (ex) partner if you are trying to reach an agreement about your child's living arrangements once you have separated. It also has information about putting your agreement in writing. You should get legal advice about your own situation, particularly before making any written agreement.

This guide contains information about family law and how the Family Court approaches the task of making arrangements for children. While most people work out arrangements without going to court, this information is useful to know as parents are encouraged to use the same principles when thinking about arrangements for their children.

Family and Domestic Violence – If you are experiencing violence, including threats of violence or abuse from your ex-partner, then trying to work out arrangements for your child directly with your ex-partner might not be appropriate and might put you and your child at risk. Please seek urgent legal advice.

Where do we start?

When it comes to making arrangements for children, the focus of family law is on what is in the child's best interests. This should also be your focus when making arrangements for your child. Parents are encouraged to be realistic and practical. Many parents are able to work out what is in their child's best interests without even knowing what family law says. It can still be helpful to have a bit of background information on family law to assist in making agreements about children and particularly in making written agreements.

What terms do we need to know?

Since mid 2006, the words used to describe arrangements for children have changed and may be different to other terms you have heard:

- "lives with" is used instead of residence or custody
- "Spends time with" and "communicates with" is used instead of contact or access

What is parental responsibility?

Parental responsibility means all the duties, powers, responsibilities and authority, which by law each parent has in relation to their child until the age of 18. Parents both have responsibility for making decisions about major long-term issues for their child unless the court orders otherwise. Major long-term issues that parents are responsible for may include:

- education (current and future)
- religious and cultural upbringing
- health
- the child's name, and
- changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.

A decision by a parent to form a relationship with a new partner is not, of itself, a major long-term issue. This is not an exhaustive list of the types of major long-term issues - there are others.

What is equal shared parental responsibility?

Equal shared parental responsibility is about parents sharing the major decisions about their child. Where parents have equal shared parental responsibility, they must try to agree on major long-term decisions for their child. If they cannot agree, they will need to try Family Dispute Resolution (FDR) (unless an exception applies), and if they still cannot agree, they need to ask the court to make the decision for them.

If you are thinking about agreeing to equal shared parental responsibility with the other parent, you should see the “Families, relationships and children” section of the Legal Aid WA website. Equal shared parental responsibility is different from equal time. It does not mean that the child will automatically spend an equal amount of time with each parent.

What does “best interests” mean?

“Best interests” is about focusing on what is best for the child. It is not about parents’ rights or what the parents want. When determining what is in the best interests of the child, family law has two primary considerations:

1. The benefit to the child of having a meaningful relationship with both parents
2. The need to protect the child from harm. Children are to be protected from abuse, neglect or family violence, including being exposed to these things.

Basically this means that a child has a right to know and spend time with both their parents, as long as this is in their best interests and they would not be subjected to harm.

There are many other things to consider when thinking about what is in the best interests of a child. In family law these are called “additional considerations”. They include:

- any family violence, or any family violence orders against any of the parties
- the child’s relationship with each of their parents and other people such as grandparents
- the attitude to parenting shown by the parents
- the extent to which each parent has taken their opportunities to spend time with and communicate with the child and participate in making decisions about the child
- the practicalities, including the cost, of the child spending time with both parents
- the views of the child, taking into account the child’s maturity and level of understanding
- the impact of any changes in the child’s circumstances
- how well each parent or other people important to the child can provide for and look after the child (not in a purely financial sense)
- whether both parents have been maintaining the child (for example, payment of child support)
- the child’s background, including maintaining a connection to the culture and traditions of their Aboriginal or Torres Strait Islander family.

These are only some of the matters to think about when determining what is in the best interests of a child. Parents should think about their individual child’s circumstances and try to make decisions that take these matters into account.

What might we need to make arrangements about?

Some parents take a fairly flexible approach and deal with issues as they arise. Some prefer to have a more structured arrangement and make decisions in advance about most issues affecting the

children that might come up. Whichever way works for your family, some of the things you might like to discuss with the other person include:

- Who will the child live with?
- What time could the child spend with each parent and other people (such as grandparents), including during the week, on weekends and holidays?
- When spending time with one parent, how can the child communicate with the other parent?
- What arrangements can be made for special occasions such as birthdays, Christmas, Mother's Day and Father's Day, other religious or family occasions?
- How will we allocate parental responsibility?
- If parental responsibility is to be shared, how will we consult about decisions that have to be made?
- What communication could the child have with other people important to them such as grandparents, other relatives or family friends? Can they write letters make telephone calls or send emails?
- Does the child have any particular health needs or special activities and how will we ensure those needs are met?
- What steps will we take if arrangements for the child need to be changed?
- What process do we want to use if a dispute arises about the arrangements?

Even if you want to sort out arrangements directly with the other parent or use a process such as FDR, you should get legal advice about your particular circumstances before starting negotiations. A lawyer can help you focus on your child's best interests, explain how family law might apply in your situation and work with you to come up with options for agreeing on arrangements with the other parent.

Are there any set or recommended times for spending time with or communicating with children?

Every family is different. There are no set rules or laws about how much time children spend with each parent, or even how often they communicate with their parents. The consideration is always what is in the best interests of the child.

Remember, arrangements also need to be practical. While parents and children might like to see each other regularly, if parents live very far apart this would not work in reality. Think about other ways of keeping in touch with children during the times they are not with you.

When thinking about what might work for your family, some good questions to start with include:

- How old is the child?
- How would they cope with being separated from the parent who normally looks after them for an hour, a day, or a week?
- How far apart are the parents' houses? Would the child have to travel? How would this affect them?
- If the parents work, when are they at work and is there any flexibility in their schedules to fit in with arrangements for children?
- How well do the parents communicate? Will we be able to make the arrangements work and deal with problems as they come up (such as forgotten items at the other parent's house)?
- Do the arrangements work for all the children or will they need different arrangements? How would this affect the children?
- What commitments do the children have to study, sport, music and so on? How can we make the arrangements work for them?

- If we are looking at changing the child's arrangements, how might this affect them? What could we do to make the change easier on them?

Reaching an agreement about living arrangements

Wherever possible and safe, parents are encouraged to agree about arrangements for their child. Where practical and appropriate, the first thing you should try is discussing things with the other parent. If you believe you can negotiate arrangements directly with the other person, you could try putting your suggestions for the child's arrangements in writing and seeing if the other person will agree.

If you would like some assistance in discussing arrangements with the other parent, you can use a dispute resolution service, such as a counselling service or Family Dispute Resolution. For more information about FDR, see the When Separating film "Resolving Disputes" and the links on the "Making Plans & Agreements" page of the When Separating website.

If you reach an agreement with the other person, you can then put the agreement into writing. You should get legal advice before starting negotiations and again before signing any agreement.

What if there has been family or domestic violence?

Where there has been violence, or threats of violence, it might not be safe for you or your children to talk directly with the other person without assistance. Reaching an agreement only works well when both parties feel they can speak and negotiate freely. It is difficult if you feel threatened or intimidated by your ex-partner or if family violence or child abuse has happened in your family. You should tell any service you are using if this applies to you.

Most dispute resolution services, such as family dispute resolution practitioners, carry out an assessment to ensure the safety and appropriateness of people using their services where there has been family violence or where there is a threat of family violence.

Where dispute resolution is still appropriate, special arrangements can be put in place to ensure your safety in the dispute resolution conference.

Making written agreements

If you and the other parent can agree about arrangements for your child you should think about making a written agreement. There are three options for making a written agreement:

- write down the informal agreement
- enter into a parenting plan or
- make your agreement into consent orders which are filed in the Family Court.

It is advisable to get legal advice before you sign any written agreement. Whilst parenting plans and parenting orders look similar in many ways, there are some important differences between them. It is important you understand these differences before you decide which to use for your agreement. A lawyer can help you decide which sort of written agreement would be the best in your particular circumstances.

What are parenting orders and consent orders?

Parenting orders are orders made by a court. If you go to the Family Court and ask it to make a decision for you, they will record their decisions about arrangements for the children as "parenting orders". Parenting orders can also be made by agreement with the other person - these are called

“consent orders”. Consent orders are parenting orders where the parents agree on the arrangements for their child. This agreement is then filed with the court, and the court makes the agreement into formal court orders.

Consent orders are enforceable in the Family Court, the same as any other orders made by the court. This means there can be consequences for not following the orders without good reason. If you want to change consent orders and the other person does not agree, you will have to return to court. Generally there must be a significant change in circumstances to vary court orders through the court, unless the other parent agrees to the change. You should seek legal advice. You can ask a lawyer to help you prepare consent orders to be filed in the Family Court, or you can prepare them yourself using the Family Court’s consent orders kit (see the “Making Plans & Agreements” page on the When Separating website. You do not already have to be in court to make consent orders. Please note that parenting orders can be varied by a later parenting plan (see below).

What is a parenting plan?

Parenting plans are a less formal way of recording your agreement with the other parent. To make a parenting plan, you write down the arrangements for the children, and then both people sign and date the document. They can be changed easily by agreement, just by making a further written agreement that is signed and dated by both parents.

Be aware that if you have court orders, sometimes a parenting plan can change those orders. You might end up with new arrangements for your child without even realising it. Seek legal advice if you are not sure what this might mean for you and before signing any written agreements with the other parent. **Important: A parenting plan is not enforceable in the Family Court.** However, if you do go to court at a later stage, a parenting plan may be looked at by the court as evidence of what your intentions were at the time.

Making arrangements work

There is more to making arrangements for children work than just handing over the child at the right time. Any parenting arrangements, if they are made through a parenting order or a parenting plan, carry responsibilities not always spelled out in the document. Both parents should do everything in their power to make time spent with the other parent or relative work well for the child. If you have safety concerns about a child spending time with their other parent, seek urgent legal advice.

The parent who the child is living with should:

- Take reasonable steps to make the child available
- Ensure that the child is dressed and ready to go
- Encourage a child to go and spend time with the other parent. This is normally the case even if the child says they do not want to go
- Reassure the child that their parent loves them and they will have an enjoyable time
- Give the other parent as much notice as possible if the arrangements have to change for some important reason, such as sickness
- Not do anything, physically or emotionally, to spoil the child’s time with the other parent
- Tell the other parent if there is anything that might affect the child’s health or wellbeing during their visit.

The parent spending time with the child should:

- Spend most of the time with their child
- Give the other parent as much notice as possible if time to be spent with the child has to be cancelled

- Take steps to ensure the child is taken back to the other parent at the agreed time
- Let the other parent know about anything that happened that might affect the child's health or wellbeing whilst the child was in their care
- Try to ensure children continue to attend their regular sporting and other commitments and don't miss out on birthday parties and other events, which they have been invited.

Both parents should remember that even if there is a court order or a parenting plan, if parents agree to change arrangements, this is allowed. Think about swapping weekends or holiday times to fit around your children's commitments and let the children know well in advance of any changes you have agreed to as parents. It might be a good idea to agree any changes in writing to avoid misunderstandings.

Parents should not be critical about each other in front of their child. And they should not use the child to get information about each other, or discuss any family law issues in front of the child.

Need more? Go to: www.whenseparating.legalaid.wa.gov.au