



Parenting arrangements after separation

How are arrangements for children made after separation?

All families are different. When considering what parenting arrangements should be made after separation, it is important to make sure the arrangements are safe, in your children's best interests and practical.

There are a number of ways that arrangements are made for children after parents separate. If parents can reach an agreement, they can leave it as an unwritten, informal arrangement. This can work for parents who are easily able to communicate with each other and trust that the other person will follow the agreement.

Parenting arrangements are generally in the form of:

- Unwritten, informal arrangements.
- A written parenting plan.
- A consent order approved by the court with the agreement of both parties.
- A parenting order made by the court (generally made if you can't reach an agreement).

What can be included in a parenting arrangement?

Parenting arrangements can cover a wide range of issues including, but not limited to:

- Where a child lives.
- Whom the child spends time with.
- How the child will communicate with each parent and other significant people.
- Where the child will attend school or childcare.
- Medical or health issues.
- Religious or cultural practices.
- Who has 'parental responsibility' for the child with respect to deciding major long-term issues for your child (for example, their education, name, health, cultural or religious upbringing, living arrangements).
- How parents will communicate with each other.

What is a parenting plan?

A parenting plan is a written agreement between the parents that sets out the care arrangements for their children.

A parenting plan is an informal way of agreeing on parenting arrangements. You should not feel pressured by the other parent to agree to any terms that you are not comfortable with. Parenting plans do not need to be in a specific form or witnessed. However, they must be signed and dated. It is best to get legal advice prior to making a parenting plan.

An advantage of a parenting plan is that it can be changed at any time, provided both parents agree. This is done by making a new parenting plan which is signed and dated. For example, you may decide to make a new parenting plan if the needs or routines of your children change.

Unlike a court order, **a parenting plan is not legally enforceable**, and you cannot force the other parent to follow the parenting plan.

If the other parent is not following the parenting plan, it is important to get legal advice about your options. **Some other issues to be aware of before agreeing to a parenting plan:**

- If you apply to the court for a parenting order after you have already made a parenting plan, the court does not have to follow the terms of your parenting plan, but it will consider it when deciding what kind of parenting orders to make.
- If you already have a parenting order or a consent order, a parenting plan made after the order will vary the terms of the original order. That is, the terms of the original order will no longer be legally enforceable. The only exception to this is if your original order states that it cannot be varied by a parenting plan or otherwise. If you are considering varying a parenting order or a consent order, you should always get legal advice first.

What is a consent order?

You can make your parenting agreement legally binding by applying to the court for a consent order.

To do this, you need to fill in a court form called an “Application for Consent Order” and attach a copy of your proposed parenting arrangement.

The application and draft orders must be signed, dated and witnessed by an appropriate witness (for example, a Justice of the Peace or a lawyer). You don't need a lawyer to apply for consent orders, but you should get legal advice to ensure that your consent order is safe, fair and workable before filing it as it will affect your future rights. It is a good idea to have a lawyer review your draft orders as the wording of a consent order needs to be specific enough so it can be enforced by the court if a parent breaches the order.

Once the consent order is filed with the court, the court will consider if the orders you propose are in the children's best interests. If the court approves the arrangements, it becomes a court order known as a ‘consent order’ (or a ‘parenting order’). A consent order has the same effect as if the parties went to court and a judge made the order.

There is a cost to file a consent order application and you can speak to the court registry to determine the cost prior to filing. You may be eligible for a waiver of the fee, for example, if you hold a concession card.

It is important to get legal advice before entering into consent orders as they can only be changed if both parents agree. This is done by entering further consent orders, a parenting plan or a parenting order.

If parents cannot agree to change a consent order, one parent will have to apply to the court to change the agreement. It can be difficult to get the court to change a consent order unless circumstances have changed significantly since the consent order was made. You should get legal advice if you want to change a consent order before applying to the court.

Is it better for me to enter into a parenting plan or a consent order?

If you have concerns that your ex-partner may not stick to the agreement that you have made, you should consider entering into consent orders rather than a parenting plan. Every circumstance is different and you should get legal advice before signing a consent order.

What if we can't agree on any parenting arrangements or it is not safe to negotiate with the other parent?

If you can't agree or it is not safe to negotiate with the other parent, you can apply to the court for a parenting order.

There are certain steps that parents need to take before going to court. These are called the 'pre-action procedures.' For example, parties are expected to try and reach an agreement by attending a family dispute resolution, making a written offer to settle your disagreement and notifying the other parent in writing that you intend to apply to a court. You do not have to take these steps if it is not safe for you or your children, but you should get legal advice first.

What is a parenting order?

A parenting order is made by the court. The court will decide the parenting arrangements for your children and your 'parental responsibilities.'

A parenting order is legally binding and enforceable. There can be serious consequences if a parenting order is not followed.

Do I need legal advice?

It is a good idea to get legal advice so that you are aware of your rights and responsibilities before agreeing to any parenting arrangements. **You may need legal advice if:**

- You or your children are unsafe or are at risk of harm (for example, there are risks related to family violence or because of drug or alcohol misuse).
- You and the other parent cannot agree about parenting arrangements.
- You are thinking about signing a parenting plan or consent orders.
- You want to ask the court to make a parenting order (or the other parent has already applied to the court).
- You have an existing parenting plan or order that you want to make changes to.
- You have signed a parenting plan or consent order you did not agree with and felt pressured, threatened or intimidated to accept.

This factsheet includes general information only and is not a substitute for legal advice.