



FAMILY & RELATIONSHIP LAW

Fact sheet: parenting orders

MY PARTNER AND I HAVE SEPARATED. HOW DO I OBTAIN PARENTING ORDERS?

What are "parenting orders"?

The reality of separation and divorce, is that one family must become two, and time with child must be shared. If you are able to reach agreement as to the future living arrangements for your child, this can be documented in one of two ways:

- a parenting plan, which is a written agreement signed by both parents, setting out the agreement reached as to the time spent with the child; or
- parenting orders, which are usually drafted by a lawyer, and which become a legally enforceable agreement, made by a Court.

The difference between a parenting plan, and parenting orders is simply that orders are enforceable by a Court whereas a parenting plan is not.

What if my former partner and I cannot agree on parenting arrangements?

If you are unable to reach agreement as to future parenting arrangements with your former partner, then you can seek the assistance of a mediator, Family Dispute Resolution Practitioner, or a lawyer to assist you to negotiate an agreement. You can otherwise issue Court proceedings, if parenting arrangements are unable to be resolved through mediation or negotiation.



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The *Family Law Act 1975 (Cth)* requires parents to have attempted mediation or family dispute resolution before issuing Court proceedings, and to provide a certificate to confirm that this has been attempted (often referred to as a Section 60I Certificate), unless:

- there are circumstances of urgency
- an application has been made previously in the past 12 months
- one or more of the parties is unable to participate effectively in mediation (because of incapacity),
- or there is abuse, family violence, or a risk of abuse or family violence occurring.

If you would like to attempt mediation, further information can be found at (www.familyrelationships.gov.au).

What if I am required to issue court proceedings?

If you cannot reach agreement with your partner, and are required to seek the assistance of the Family Court or Federal Circuit Court, you should seek legal advice. You can seek the advice of a family lawyer, by contacting the Law Institute in your particular state, or by contacting a local community legal service.

In a parenting case, the Court's primary objective is to ensure that the best interests of the child are met by ensuring that the child has the benefit of having a meaningful relationship with both parents, and by protecting them from psychological harm or from being subjected (or exposed) to abuse, neglect or family violence.

The Court will otherwise take into consideration a range of factors to determine an interim parenting arrangement, which includes any views expressed by the child, the nature of the relationship between the child and each parent (and any other significant person), the extent to which each parent has participated in making long term decisions for the child and spent time with the child, whether child support or financial support has been provided for the child, the capacity of each parent to provide for the emotional and intellectual needs of the child, the maturity, sex, lifestyle and background (including culture and traditions) of the child and the parents, and any other characteristics of the child that may be relevant, and whether there has been family violence.

As part of the proceedings your family may be asked to meet with a Family Consultant, who is a specialised family psychologist, who will meet with you, your former partner and your child, and thereafter prepare a report (known as a family report) which sets out recommendations to the Court for future parenting orders.

The Court may also appoint an Independent Child's Lawyer as part of the proceedings, to act on behalf of the child. This normally occurs in very complex cases, or where there are allegations of abuse or family violence.

You will have an opportunity to resolve your matter throughout the Court process by negotiation, and if you do, then parenting orders can be made by the Judge by consent. However, if you cannot reach agreement, your case will be listed for a final hearing, and a Judge will make final orders taking into account the recommendations of any family report, and the evidence provided by you, your former partner and any Independent Child's Lawyer.

What can I do if my former partner takes my child from me?

If, following separation, your child is removed from your care without your consent, you are able to seek urgent orders from the Court (referred to as Recovery Orders) to have child returned to you. This can be done on an urgent basis (sometimes within 24 hours), and will result in the Police being directed to locate your child, and return the child to your care.

If you have concerns that your child may be taken out of the country, then you are able to seek an Airport Watch List Order, which will create an alert which will be visible at all airport locations throughout Australia, which will prevent your child leaving Australia.

What do I do if I am concerned I am not the biological parent of the child?

In the event that you have concerns about the paternity of a child, an application can be made to the Court to have paternity testing undertaken to resolve any dispute. The Court can order the child, the mother or any other person attend for such testing, including submitting to a medical procedure, to determine parentage. The Court can then make parenting orders once the results are known.

I am a grandparent/step-parent/close family member of the child – do I have rights?

Yes. Under the *Family Law Act 1975 (Cth)* a significant person to the child, can seek orders to spend time with, or communicate with, a child.

Contact us

Our Family & Relationship Law team can provide you with advice regarding your family law matter. Please contact us on for an obligation free discussion.



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