



Making arrangements for children following separation

Parents **who agree** about arrangements for their child can:

- Have an **informal agreement**
- Enter into a **parenting plan**
- Apply to the Court to approve **consent orders**
- Have a combination of a **parenting plan** and **consent orders**

You should get advice from a lawyer about which type of agreement best suits your circumstances.

Parents **who cannot agree** about arrangements for their children can apply to the Court for **parenting orders**. In most circumstances, it is necessary that you make a genuine effort to reach an agreement through Family Dispute Resolution (FDR) before you go to Court. FDR is sometimes referred to as mediation.

Exceptions to participating in FDR:

- The parties are applying for consent orders
- The application is in response to the other

party's application

- The Court is satisfied there are reasonable grounds to believe there has been or is a risk of abuse or family violence
- The application is about a serious contravention of parenting orders that were made in the last 12 months
- The application is urgent
- One of the parties is unable to participate in FDR because of a disability or living in a remote location

The **best interests of the child** should be your main concern when making an agreement and will be the main factor that the Court considers. Our fact sheet called "Best Interests of the Child" lists the factors that are considered in deciding what is in a child's best interests.

An **informal agreement** is made when the parties verbally agree on the arrangements for the child.

Advantages:

1. The parties can be flexible about the arrangements and can change the arrangements when required.
2. A successful informal agreement encourages communication between the parties.
3. Informal agreements don't cost any money to make.

Disadvantages:

1. The parties can get confused about the arrangements because they are not written down.
2. If the agreement is not detailed enough, difficulties may arise when parties need to make changes for holidays, birthdays, Christmas and other events.
3. The agreement cannot be enforced in Court.
4. A verbal agreement cannot be shown to schools, the Child Support Agency or other parties.

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A **parenting plan** is a written agreement setting out the arrangements for the child, which is signed and dated by the parents.

Advantages:

1. A parenting plan clearly sets out what arrangements both parents have agreed for the child.
2. A parenting plan can be used for long term, short term and trial arrangements.
3. A parenting plan can be changed by another written agreement.
4. A parenting plan can be drafted by the parties without the assistance of a lawyer.
5. A parenting plan can be used to fully or partially override existing Parenting or Consent Orders. This is useful when both parties reach a new agreement that is different in full or part to existing Consent or Parenting Orders. It is also useful where the parties want to combine the certainty of court orders for some aspects of the arrangements with the flexibility of a parenting plan for other aspects of the arrangement.

Disadvantages:

1. The terms of a parenting plan are not legally binding and cannot be enforced by a Court if one parent fails to follow the agreement (but they can be considered in any future Court proceedings).

Consent Orders are a written agreement signed by the parties. It can be delivered or posted to the Court along with an "Application for Consent Orders". The Court can make Consent Orders if they are in the best interests of the child.

Advantages:

1. Consent orders make clear what arrangements both parties have agreed for the child.
2. Consent orders can be enforced by the Court. The person who breaks the orders can be punished.
3. Parties are able to get orders that have the same effect as Parenting Orders without needing to attend Court.

Disadvantages:

1. Consent Orders cannot be changed without a further agreement or Court order.
2. Parties may need the assistance of a lawyer to draft Consent Orders. If lawyers draft the Consent Orders there are usually costs.
3. There is an \$80.00 Court filing fee.

Parenting Orders are orders made by a Judge about the arrangements for the child. The parties must obey these orders. In most circumstances, parties must first attempt Family Dispute Resolution before filing an Application with the Court for Parenting Orders.

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Advantages:

1. A Judge makes a decision when the parties cannot.

Disadvantages:

1. The parents don't get to decide on the living arrangements for their own child and may not like the outcome.
2. Going to Court involves significant time, financial costs and stress for the parties and their child.
3. Parenting orders cannot be changed unless the parties agree. Another Court Application can only be filed IF there is a significant change in circumstances since the last orders.
4. Unless it is an urgent matter, it can take 2 or more years until an Application is heard by the Court.

Issues to consider when making agreements about your children

There is no standard agreement you need to use when making arrangements about your children.

However, the issues below may be relevant to your circumstances, and if so, they could be included in any agreement.

School holidays:

- If the change-over between parents will occur half way through the holidays, how will this date be calculated?
- Do the holidays include or exclude pupil free days and public holidays which fall at the start or end of a school holiday period?
- Will school holiday time alternate from year to year between the first half of the holidays and the second half of the holidays?

Long weekends:

- Does a weekend include the extra days of a long weekend?

Significant days:

- What will happen on Good Friday, Easter Sunday, Easter Monday, Christmas Day, Boxing Day, New Years Eve and other days of religious or cultural significance?

- Will the children spend these days with each parent on alternating years or will the day be split between the parents?
- Where these days fall within block time, such as school holiday time, will the block time be suspended during these days and then resume?
- Will the children spend father's day with the father and mother's day with the mother? If these days fall on a weekend that would usually be spent with the other parent, will that weekend be substituted for another?
- What about the children's birthdays and each parent's respective birthdays?

Drop off and pick up points:

- Who is responsible for dropping off and picking up of children? What time will drop off and pick up occur and where will it occur?
- Will the changeover place be at a parent's home, the home of a relative or friend, a neutral place (such as a fast food restaurant) or will the children be collected from school on a Friday afternoon and dropped off to school on a Monday morning?

Telephone contact:

- Will the children talk with a parent over the

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- phone when living with the other parent?
- If so, is this to be at set times and days or will it be a flexible arrangement?
- Who is to make the phone call and on what number?

While a child is in the care of each parent:

- Does there need to be a discussion about the use of drugs and alcohol while the children are in the care of each parent?
- What should each parent should do in the case of an emergency while the children are in their care?
- Are there any people the children should not be left with?
- Can both parents attend sporting and other events involving the children? If both parents will not attend the same event, will they take turns to attend?

Communication between parents:

- How will the parents communicate with each other? Will it be by phone, in face to face meetings, by email, by text?
- How will times and places for face to face and phone discussions be decided?
- How will the parents reach each other in emergencies?

Interstate travel / overseas travel:

- What will happen if one parent wants to take the children overseas or interstate?
- Does each parent need to advise the other parent of any and each intention to travel inter-state or overseas?

School:

- How will you communicate with the other parent about things such as progress and school reports?
- Will both parents attend school concerts and other special days at school?
- Will both parents attend parent-teacher interviews?
- Who should the school contact in an emergency?

- How will school fees and other expenses be paid?

Accommodating changes in circumstances:

- What works for a 5 or 6 year-old child is unlikely to work for a 13 or 14 year-old child. Will your agreement accommodate these changes?
- Will you agree to renegotiate your agreement from time to time or in a set year?

If you need information on division of your property following separation, please refer to our factsheets called “Divorce and Property” and “Property in Defacto Relationships”.

If you need information on child support, please refer to the Child Support Agency website at www.csa.gov.au.