
Children

A formal agreement for the care arrangements of a child is often not necessary. An agreement can be formally recorded as parenting orders made by the court or, more informally, as a parenting plan.

Parenting orders

The court can make orders about children setting out each person's responsibility for the children. Parenting orders can provide for:

- how parental responsibility is shared
- who the child lives with
- what time the child spends with each parent and others
- maintenance of the child
- any other matter the court thinks relevant

Parental responsibility gives the parents the responsibility to make decisions about their child's life. Long term decisions about parental responsibility involve such matters as education, health and religion.

When making parenting orders, the court starts with the presumption that it is in a child's best interests for the parents to have equal shared parental responsibility. If there has been family violence or abuse, this presumption does not apply.

If equal shared parental responsibility is in the child's best interests, the court must consider whether it is reasonably practical for the child, and in the child's best interests to spend equal time with each parent. If an equal time arrangement is not practical or in the child's best interests, an arrangement to spend 'substantial and significant time' with each parent should be considered. If there is substantial and significant time, each parent has a meaningful involvement in the child's life. Sometimes it is not in the best interests of the child to spend equal time or substantial and significant time with each parent.

The best interests of the child are the paramount consideration for the court when making a parenting order. The court must have regard to the primary consideration and additional considerations.

The primary considerations are:

- the benefit to the child of having a meaningful relationship with both parents
- the need to protect the child from physical or psychological harm and being subjected to, or exposed to family violence or neglect

The additional considerations include:

- any views expressed by a child and the child's maturity
- the child's relationship with each parent and other persons
- the willingness of each parent to facilitate and encourage a relationship between the child and other parent
- the practical difficulty and expense of the children seeing each parent
- the capacity of each parent to provide for the child's needs
- the attitude of each parent towards the children and responsibility of being a parent
- the maturity, sex, lifestyle and background of the child and each parent
- any family violence

Parenting plans

A parenting plan is a written agreement signed by both parties that sets out the care arrangements for a child. A parenting plan is worked out between the parties with the assistance of a solicitor or mediator. It is an informal agreement and does not have court approval.

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Parenting plans can deal with anything relating to the care, welfare and development of a child such as:

- who the child lives with
- what time the child spends with the each parent and other people
- parental responsibility
- communication
- arrangements for special days

In addition to setting out the care arrangements for a child, it is desirable for any parenting plan to include ways:

- for parents to consult about parental responsibility
- to resolve disputes
- to change the plan for changing needs of the child.

Provisions in a parenting plan relating to child support are not enforceable unless the plan meets the requirements of a child support agreement.

A parenting plan can set out child maintenance obligations after a child reaches 18 years of age. These provisions are not enforceable.

A parenting plan is simpler, more flexible and less expensive option to court orders. It gives the parties the ability to decide how any future disputes should be resolved. However, a parenting plan is not legally enforceable and there is no legal obligation on the parties to comply with its terms.