

CHILDREN

Parental Responsibility

All biological parents have responsibility for their children until they turn 18, unless a court orders otherwise. This does not change if there is a change in your relationship with your partner, for example, if you decide to separate or remarry. The court presumes that it is in the best interests of your child for you and your partner to have equal shared parental responsibility for your children.

The federal Family Law Act 1975 is guided by the following:

- Children have the right to know and be cared for by both their parents, whether their parents are married, separated, have never married or have never lived together
- Children have a right to spend time often and communicate often with both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives)
- Parents jointly share duties and responsibilities for the care, welfare and development of their children
- Parents should agree about the parenting of their children
- Children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture)

The Best Interests of the Child

The law places a heavy emphasis on parents agreeing on arrangements for their children and court proceedings should be regarded as the last resort.

The paramount consideration of the court in making a parenting order is the best interests of the child, including:

- Ensuring that your children have the benefit of both parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of your children
- Protecting your children from physical or psychological harm and from being subjected to or exposed to abuse, neglect or family violence
- Ensuring that your children receive adequate and proper parenting to help them achieve their full potential
- Ensuring that parents fulfil their duties and meet their responsibilities for the care, welfare and development of their children

In determining what is in your child's best interests, the court looks at primary and additional considerations:

Primary considerations

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

Additional considerations

- Any views expressed by your child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the importance it should give to the child's views
- The nature of the relationship of the child with each parent and other people (including any grandparent or other relative)
- The extent to which each parent has taken part, or failed to take part, in making decisions about major long-term issues in relation to the child and to spend time with the child and to communicate with the child
- The extent to which each parent has fulfilled, or failed to fulfil, their obligations to maintain the child
- The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either parent or any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living
- The practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and frequent direct contact with both parents
- The capacity of each parent and any other people (including any grandparent or other relative of the child) to provide for the needs of the child, including emotional and intellectual needs
- The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the

child and of either parent and any other characteristics of the child that the court thinks are relevant

- If the child is an Aboriginal child or a Torres Strait Islander child, the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share it) and the likely impact any proposed parenting order will have on that right
- The attitude to the child, and to the responsibilities of parenthood, demonstrated by each parent
- Any family violence involving the child or a member of the child's family
- If a family violence order applies, or has applied, to the child or a member of the child's family, any inferences that can be drawn from the order, taking into account the nature of the order, the circumstances in which the order was made, any evidence given in proceedings for the order, any findings made by the court in, or in proceedings for, the order or any other relevant matter
- Whether it would be preferable to make the order that would be least likely to lead to the start of further proceedings in relation to the child
- Any other fact or circumstance that the court thinks is relevant

Resolving Disputes

Mediation

Mediation can be a cheaper and more amicable way to settle disputes than court proceedings. Mediators help you decide which areas are in dispute, explore possible solutions and draw up agreements. Agreements reached in mediation are not legally binding and should be formalised.

Collaborative Practice

Collaborative practice encourages an open, cooperative environment in which you and your spouse and your lawyers work towards a fair solution without resorting to court proceedings. Collaborative practice is designed to focus on resolution and minimise conflict and anxiety.

Family Dispute Resolution

Family Relationship Centres provide families with information about relationships and separation, including the need to agree on arrangements for children. In most cases you will need to have a certificate from a Family Dispute Resolution practitioner on whether a genuine effort has been made to resolve the matter before you will be able to start court proceedings.

Reaching an Agreement

If you and your partner do reach agreement there are two ways of formalising it:

- Consent Orders through the Family Court of Australia
- A Parenting Plan

You should take legal advice on which of those options is more appropriate for your circumstances. The issues involved in the care, welfare and development of your children can be complex, and any decisions you make now can have significant implications for the future.

Parenting Orders

If you cannot agree on the arrangements for your children, you can apply to the Family Court of

Australia or the Federal Magistrates Court of Australia.

These orders are called parenting orders and include four types:

- Orders about parental responsibility and decision making
- Orders about who the child will live with
- Orders about the child spending time with and communicating with the parent he or she does not live with
- Orders about specific issues

A parent, a child or anyone else concerned with the welfare of the child can apply to the Family Court of Australia or the Federal Magistrates Court of Australia for a parenting order. There can be serious sanctions imposed by a court for a breach of a parenting order. If a court finds that a parent has reasonable cause or excuse for breaching a parenting order, then they will have not breached the parenting order.

The court can order compliance with orders by:

- Ordering attendance at a parenting program
- Ordering compensation to be paid for time which was not spent with your children because of a breach of the orders
- Making another order varying the originally breached order

For serious disregard of obligations under parenting orders the court can:

- Make a person the subject of a community service order
- Order the person to enter into a bond
- Fine the person
- In extreme circumstances, order a term of imprisonment

Child Support Agreements

You and your partner are financially responsible for the financial care, welfare and wellbeing of your children. Child support may be obtained by either an assessment conducted by the Child Support Agency or by a private Child Support Agreement.

The Child Support Scheme covers all children in Australia whose parents have separated whether or not the parents were married to each other. If a child turns 18 during their last year at school then that child is eligible for child support until they complete the school year. Normally both parents must also be living in Australia but there are arrangements with some countries for collection and payment of child support if one of the parents or the child is living in that country. A child who is married or living in a de facto relationship is not eligible for child support.

The Child Support Agency uses a formula to work out how much child support a parent is required to pay. Either parent, or a carer who is not a parent, can apply to the Child Support Agency for a child support assessment. For further information regarding the formula and a basic child support estimator visit <http://guide.csa.gov.au/>.

Child Support Agreements

The Child Support Agency encourages parents to reach their own agreements about the financial support of their children. Agreements can provide for financial support in various ways such as the payment of school fees, health insurance premiums or mortgage repayments, as well as periodic cash payments. If an agreement is reached it can be registered with the Child Support

Agency. There are two types of child support agreements:

- Limited child support agreements - can be entered into without legal advice. Either party to the agreement can end the agreement after three years or if the amount that would be payable under a child support assessment changes by more than 15 per cent. The amount of child support payable under a limited child support agreement must be at least the amount that would be payable under the child support formula.
- Binding child support agreements - can only be entered into after both parties have had independent legal advice. The amount payable under a binding child support agreement can be less than the amount payable under the formula. Binding child support agreements cannot be ended by only one party in the way that limited child support agreements can.

While both limited and binding child support agreements can be set aside by court order, binding agreements are harder to set aside. If parents agree, they can end a child support agreement at any time by making a further agreement ending the earlier agreement, though independent legal advice is required for an agreement ending a binding child support agreement. It is always best to check with a family lawyer before entering into a child support agreement.

Need Advice?

Find your lawyer legal referral service

T: 9607 9550

W: <http://www.liv.asn.au/Referral>

Legal community centre

T: 03 9652 1500

W: <http://www.communitylaw.org.au>

Victoria Legal Aid

T: 9269 0120 or 1800 677 402

W: <http://www.legalaid.vic.gov.au>