

Children's care arrangements following separation

Following a separation parents do not have to go to court about the care arrangements for their children. As a matter of principle we encourage our clients to reach an agreement if possible without the need to resort to the Family Law courts. One advantage in reaching an agreement is that the legal fees will be much less than otherwise. That is not to say that a person should reach agreement unreasonably.

Parents who are able to reach an agreement regarding care arrangements for their children have two ways to formalise their agreement. If you and your former partner agree on the future arrangements, you can either make a parenting plan or obtain consent orders approved by a court.

Parenting Plan

A parenting plan is a written agreement that is made between the parents of a child or children. A parenting plan is a written agreement that sets out parenting arrangements for each child, is signed by the parents of the child, is dated and deals with matters in regards to the care arrangements for the child. Because it is worked out and agreed jointly, you and your former partner do not need to go to court.

Parenting plans can also deal with child support payments.

However, it should be noted that a parenting plan is **not** a legally enforceable agreement. Therefore parents who elect to enter into a parenting plan are often those parents without issues regarding trust, reliability, or dishonesty regarding the other parent. If there are real and serious issues between the parties then a parenting plan may not be ideal.

Putting it another way, parenting plans are very useful where parents can cooperate and agree about the care arrangements for the child the subject of the parenting plan.

Consent Orders

The second option available to formalise any agreement is to ask the Court to make 'Consent Orders' approving the terms of the agreement between the parents. This is by far the more common way for parents to agree to the care arrangements for the children.

Consent Orders can only deal with the care arrangements for children and cannot deal with child support for the child the subject of the Consent Orders.

Consent Orders can also deal with the following issues regarding the care arrangements for the child:

- whether the parents are to have equal shared parental responsibilities or specify the division of parental responsibilities between them
- with whom the child lives
- whether the children will spend equal time with each parent or “substantial” and “significant” time with a parent, including specific details of how the child will spend time with each parent
- the child spending ‘special days’ with each parent such as Christmas, Easter, birthdays, father’s and mother’s days as examples
- the time a child will spend with a grandparent or other relative
- the communication a child will have with another parent or person
- if two or more persons share parental responsibilities, the form of consultation required between the persons
- any aspect of the care, welfare and development of the child, including education (the school the child will attend), health, religion and cultural aspects, including any travel arrangements

It is important to note that Consent Orders **are** enforceable by the Court. This is because they are filed in the Family Court and become an Order of the Court. In these circumstances, if a parent fails to comply with the Order without the consent of the other parent, it is possible to ask the Court to enforce the Order.

In cases where there is a risk that one parent will not return the child to the other parent after they have spent time with that parent, the other party will find this beneficial.

If you know someone who may need assistance, call us on (03) 9459 5764 or email us admin@rtlegal.com.au for more information.