

Parenting And Child Custody | Empower Family Law & Mediation

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Services

Parenting and Child Custody

Working out how you and your children's other parent will share time, make decisions and stay in touch after separation is rarely straightforward, but it's natural to feel overwhelmed by where to start. This page explains your options, how the law approaches these decisions, and how Empower Family Law & Mediation can help you reach an arrangement that works for your family.

What are my options?

There are three main ways parenting arrangements can be recorded, each with a different level of formality:

Parenting plan: A written agreement between you and the other parent setting out day-to-day arrangements. It's flexible and can be updated as your family's needs change, but it isn't legally enforceable.

Consent orders: The same kind of agreement, but formalised and approved (or, 'sealed') by the Federal Circuit and Family Court of Australia. Once approved, consent orders are legally binding and enforceable in the same way as any other Court Order.

Parenting orders: Made by a Court after a contested hearing, where you and the other parent haven't been able to reach agreement. These are also legally binding.

Many families can agree a parenting plan or consent orders without going to Court. We can help you negotiate an arrangement, document it properly, and if you agree, apply for consent orders so it's legally binding.

How are parenting arrangements decided if we can't agree?

If you and the other parent can't reach agreement between yourselves, the next step is usually Family Dispute Resolution (FDR). FDR is a form of mediation with an accredited Family Dispute Resolution Practitioner, aimed at helping you reach an agreement without going to Court.

In most cases, you're required to make a genuine effort at FDR and obtain a certificate (Section 60I Certificate) before you can apply to the Court for parenting orders. This requirement doesn't apply in some circumstances, such as where there is family violence or child abuse, or where the matter is urgent

If FDR doesn't resolve things, or isn't appropriate in your circumstances, we can help you apply to the Court and represent you through that process.

What does the Court consider when deciding a parenting matter?

Under the Family Law Act 1975, Section 60CC outlines how a Court determines what is in a child's best interests. Following amendments that commenced in May 2024, the previous two-tiered system of primary and additional considerations was replaced by a non-hierarchical list of six factors to provide greater clarity and address safety, cultural, and practical concerns.

Following the amendments, the Court must consider the following six factors:

Safety : What arrangements best promote the safety of the child and any person with care of the child, including protection from family violence, abuse, neglect, or other harm.

Child's Views : Any views expressed by the child, and factors such as the child's maturity or level of understanding that determine the weight to be given to those views.

Developmental Needs : The developmental, psychological, emotional, and cultural needs of the child.

Parental Capacity : The capacity of each person with parental responsibility to provide for the child's developmental, psychological, emotional, and cultural needs.

Relationships with parents and others : The benefit to the child of being able to have a relationship parents and other significant people (such as grandparents), provided it is safe to do so.

Other Circumstances : Any other fact or circumstance that the Court thinks is relevant to the situation of the child.

The Court must also specifically consider any history of family violence and any family violence orders that apply. Where a child is Aboriginal or Torres Strait Islander, the Court must additionally consider the child's right to enjoy and stay connected to their culture, including through family, community, country and language.

There is no presumption that time or decision-making responsibility should be shared equally and every family's arrangement is worked out based on what's best for their children.

A note on safety

If family violence is part of your situation, you're not alone, and support is available. You don't need to manage this by yourself, please talk to us so we can help you plan for your safety and your children's safety as part of any parenting arrangement.

If you need to speak to someone urgently, 1800 RESPECT (1800 737 732) or Safe Steps (1800 015 188) provide free, confidential support 24 hours a day, and in an emergency, you should call 000.

How we can help

We apply these same principles to help you negotiate parenting arrangements that put your children first. Our focus is on using our experience to help you reach agreement with your former partner wherever possible. Where you're able to agree, we can help you formalise that agreement through consent orders. Where you can't agree, we have the experience and knowledge to represent you through mediation and, if needed, litigation.

Every family is different, and the right arrangement depends on your circumstances. Please contact us on (03) 7020 6542 to talk through your options with our team.

FAQ's

Does a parent automatically get equal time with their children?

No. There is no automatic right to equal time, and no presumption in the law that decision-making or time should be shared equally. Every arrangement is based on what's in your children's best interests.

What happens if we simply can't agree?

You'll generally need to attempt Family Dispute Resolution first. If that doesn't resolve things, either of you can apply to the Court, which will make parenting orders after considering your children's best interests.

Can grandparents or other family members apply for time with a child?

Yes. Grandparents and other people significant to a child, such as aunts, uncles or stepparents can apply to the Court for orders, and the Court can consider the benefit to the child of those relationships.

What if there is family violence involved?

The Court is required to consider your children's safety and any history of family violence when making parenting orders, and the usual requirement to attempt mediation first doesn't apply where there are family violence or child safety concerns. Please tell us about this early so we can help you plan appropriately.

Is a parenting plan legally enforceable?

No. A parenting plan is a written agreement, but it isn't binding in the same way as consent orders or parenting orders. If you want your agreement to be enforceable, we can help you apply for consent orders.

How long does it take to sort out parenting arrangements?

It depends on whether you and the other parent can agree. Arrangements reached by agreement can often be documented in a matter of weeks. Contested Court proceedings usually take considerably longer. We'll give you a realistic timeframe once we understand your situation.

Speak with us

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : info@empowerfamilylaw.com.au

Let us be your voice in troubled times.

Contact Us

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What is the difference between a parenting plan, consent orders and parenting orders?

A parenting plan is a written agreement between parents about day-to-day arrangements. It can be flexible and updated as family needs change, but it is not legally enforceable in the same way as a Court order. Consent orders record an agreement approved by the Federal Circuit and Family Court of Australia. Once made, they are binding and enforceable. Parenting orders are also binding, but are made by the Court after it determines a disputed matter. The right form depends on the family's circumstances, the level of cooperation, safety concerns and the need for enforceability. A clear agreement can address living arrangements, time, communication, decision-making and practical handovers. Before relying on an informal arrangement, obtain advice about whether it protects the child's needs and gives the legal certainty the family requires.

What happens if parents cannot agree on arrangements for their children?

The usual next step is Family Dispute Resolution, often called FDR, with an accredited practitioner. In most cases a person must make a genuine effort at FDR and obtain a section 60I certificate before applying to the Court for parenting orders. Exceptions can apply, including where the matter is urgent or involves family violence or child abuse. FDR may be unsuitable or need safeguards in some circumstances. If agreement is reached, it may be recorded in a parenting plan or formalised through

consent orders. If the dispute is not resolved, a parent can ask the Court to make parenting orders. Evidence about the child's current arrangements, needs, safety and each proposal will matter. Early advice can help frame a practical proposal and identify whether an exemption or urgent application may be appropriate.

How does the Court decide what parenting arrangement is in a child's best interests?

The Court treats the child's best interests as the paramount consideration. The page explains the six non-hierarchical factors applying after the May 2024 amendments: safety; any views expressed by the child and the weight appropriate to those views; the child's developmental, psychological, emotional and cultural needs; each carer's capacity to meet those needs; the benefit of relationships with parents and other significant people where safe; and any other relevant circumstances. The Court must also consider any history of family violence and relevant family violence orders. Additional cultural considerations apply for an Aboriginal or Torres Strait Islander child. There is no automatic rule that children spend equal time with each parent or that decision-making is shared equally. A workable proposal should address the particular child's routine, safety, relationships, development, communication and practical needs.

What should I do if family violence or an urgent child-safety issue affects parenting arrangements?

Put immediate safety first. If a person or child is in immediate danger, call 000. The page also identifies 1800RESPECT on 1800 737 732 and Safe Steps on 1800 015 188 as free, confidential support services available 24 hours a day. Tell a family lawyer about violence, threats, intervention orders and child-safety concerns at the beginning because they can affect negotiation, mediation and the orders sought. The usual requirement to attempt Family Dispute Resolution can be displaced where family violence, child abuse or urgency is present. Depending on the facts, urgent parenting, recovery or protective orders may need to be considered. Keep lawful records such as messages, existing orders and a factual chronology, but do not place yourself at risk to collect evidence. Tailored advice is needed because safety planning and Court steps must fit the circumstances.