

Separation & Children

**We have just separated and disagree about arrangements for the children.
What should we do?**

Family Dispute resolution

Family Dispute Resolution is the legal term for services (such as mediation) that help couples affected by separation and divorce to sort out family disputes. It can help you to agree on a range of issues relating to property, money, and most importantly – your children.

The law requires you to take certain steps before approaching the court for a decision about issues affecting your children. Unless your case is urgent, or involves some exceptional factors, such as allegations of abuse or family violence, you must do the following before you go to court:

- Make a genuine effort to resolve the dispute through counselling or mediation; and
- Make reasonable efforts to communicate with the other party.

There are many services that help with family dispute resolution including Legal Aid NSW, the Family Relationship Advice Line and the Family Relationship Centres which provide assistance to separating families including helping parents reach agreements.

It will often be important to get some legal advice as the agreements you make about where children live and where they spend their time can also affect your property matters and child support.

In cases where domestic violence has occurred

There are special provisions in regard to making court orders in situations where children are involved with domestic violence. This includes not having to participate in family dispute resolution if it is not safe to do so.

The definition of family violence can include violence towards any family members. Therefore, any family violence whether or not directed towards the child is relevant to family law proceedings.

It is important that families provide the court information about family violence and child abuse concerns, so that the court can consider any such concerns when determining parenting orders.

The court is required to make orders that it considers proper in the circumstances, having regard to the best interests of the child above all other considerations.

Family violence and child abuse concerns are relevant to determining what orders are in the best interest of the child, as the court is to consider as a primary consideration the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.



An Australian Government Initiative

It is therefore important that families discuss their family violence concerns with their legal representatives. In addition, the courts have a specific form for families to file to bring family violence and child abuse to the courts' attention. The form is the Notice of Child Abuse and Family Violence, which must be filed where parties have concerns about child abuse or family violence. Once the form is filed, the court has a maximum of eight weeks to consider what orders to make to gather additional information about the family violence or child abuse concerns and/or to protect the at-risk family members.

Families are also required to provide the court with copies of any family violence orders that apply to the family.

Contact these services for more advice

The Family Relationship Advice Line (1800 050 321) is available from 8 am to 8 pm, Monday to Friday, and 10 am to 4 pm on Saturday or you can go online at <http://www.familyrelationships.gov.au/>

Family Relationship Centres are now all over NSW including Blacktown and Penrith. The Advice Line can direct you to your nearest centre.

Legal Aid NSW Tel 1300 888 529 (or 1300 889 529 TTY) between 9 am and 5 pm, Monday to Friday (excluding public holidays).

What sort of agreements can we make about arrangements for the children?

You don't have to get formal orders made about the arrangements for the children, you can organise informal agreements. Many separated parents have informal agreements in place about the parenting of their children. Court orders are not involved in this arrangement.

Agreement is usually reached through negotiation between the parents with or without the help of mediation or counselling services.

Neither parent can make the other stick to an informal agreement.

Parenting Plans

A Parenting Plan is a written agreement which is signed and dated and sets out arrangements for the care of your children.

Parenting plans may not be appropriate in all circumstances, for example where there are family violence or child abuse concerns.

Parenting plans are not valid unless they are made free from duress, threat or coercion.

Parenting plans can affect later parenting orders. Families should consider seeking legal advice if entering into a parenting plan. A lawyer, family counsellor, family

dispute resolution practitioner or family consultant can help you and your ex-partner make a Parenting Plan.

Parenting plans can be changed by later court orders, as well as by later parenting plans.

Further information is available from the 'Parenting Plans Guide' available on Family Relationships Online.

Which courts decide parenting matters?

There are three courts that can deal with family law matters; the Family Court, the Federal Magistrates Court and the Local Court.

In most cases you will lodge an application with the Family Court or the Federal Magistrates Court.

What does the Court consider when making a parenting order?

The Courts decide what parenting orders to make for a child on the basis of the best interests of that child. The law says that in determining the best interests of a child, the Court's primary considerations must be: the benefit to the child of having a meaningful relationship with both of the child's parents; and, the need to protect the child from physical or psychological harm including being subjected to, or exposed to, abuse, neglect or family violence.

Additional considerations include:

- any views expressed by the child, taking into account the child's maturity;
- the child's relationship with each parent and with any other person who is important (e.g. grandparents, siblings);
- the effect on the child of any change in care arrangements, including separating siblings from each other; the capacity of each parent to provide for the needs of the child; the willingness and ability of a child's parents to encourage a close and continuing relationship with the other parent.

The parenting order that the Court makes will provide for matters such as:

- who a child will live with; what time a child will spend with a parent or other people important to them;
- how parental responsibility will be shared;
- how parents will communicate about a child;
- how any disputes about what is set out in the orders will be resolved.

Parental responsibility means the duties, powers, responsibilities and authority which, by law, parents have to their children and the important decisions they make about their children. Each parent has parental responsibility for a child unless the Court makes an order changing this.

The Court presumes that parents will have equal shared parental responsibility, unless there has been abuse of a child, family violence, or it is not in the child's best interests.

Equal shared parental responsibility means that the parents need to consult each other about the major long term issues affecting a child, such as education, religion, health, the child's name and changes to the living arrangements of a child that would make it much more difficult for the child to spend time with the other parent.

When an order is made for equal shared parental responsibility, the Court will also consider whether it would be in the child's best interests or practical for the child to spend either equal time with each of the parents, or substantial and significant time with each parent.

The Court will take into account how far apart the parents live, the effect on the child of any proposed arrangements, and how the parents can co-operate with each other.

Consent Orders

There are two circumstances in which parties can obtain consent orders – by applying for orders without starting family law proceedings, or by applying for consent orders during proceedings. There are differences as to which court a person can apply for consent orders depending on whether they apply for consent orders with or without starting family law proceedings.

Parties should consider obtaining legal advice about the effect of the proposed consent orders.

The courts do not automatically approve proposed consent orders, but will review the draft orders to consider whether the orders are in the best interests of the child. This can include consideration of whether there are any family violence or child abuse concerns.

More information about consent orders is available from the Family Law Courts website.

This information was sourced from the Publications Unit of Legal Aid NSW. This information is also available online at: www.legalaid.nsw.gov.au/pubsonline

Comprehensive resources about Family Dispute Resolution, Parenting Orders, Parenting after separation, and support services is available by phoning the Family Relationship Advice Line on 1800 050 321 or online at <http://www.familyrelationships.gov.au/>