

## **FAMILY LAW: An overview of parenting orders and parenting plans**

Parenting orders, are orders made by a Court, in relation to the care and welfare of a child. Parenting orders include:

1. Court determined orders about parental responsibilities and the arrangements for a child, where the parties are unable to reach agreement about such matters; and
2. Court approved consent orders, where the parties reach agreement about parental responsibilities and arrangements for a child, and have the court validate such arrangements so they are legally enforceable as orders.

### **The best interests of the child**

When a Court is making a parenting order, the Family Law Act requires it to have regard to the best interests of the child, as the most important consideration. The Family Law Act makes it clear that ordinarily:

- both parents are responsible for the care and welfare of their children until such children reach the age of majority; and
- arrangements which involved shared responsibilities and cooperation between the parents are in the best interest of the child.

Such responsibilities are not affected by circumstances such as, separation, divorce or remarriage.

Parents must also apply this principle of the child's best interests being paramount, when making parenting plans by agreement.

### **Two tiers of consideration**

In deciding what is in the best interest of a child, the Act requires a Court to take into account two tiers of considerations - primary considerations and additional considerations.

#### **Primary considerations**

The primary considerations are:

- the benefit to children of meaningful relationships with both parents; and
- the need to protect children from physical or psychological harm (from being subjected or exposed to abuse, neglect or family violence).

#### **Additional considerations**

The additional considerations are:

- the child's views and factors that might affect those views, such as the child's maturity and level of understanding;
- the child's relationship with each parent and other people, including grandparents and other relatives;
- the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent;

- the likely effect on the child of changed circumstances, including separation from a parent or person with whom the child has been living, including a grandparent or other relatives;
- the practical difficulty and expense of a child spending time with and communicating with a parent;
- each parent's ability (and that of any other person) to provide for the child's needs;
- the maturity, sex, lifestyle and background of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- the right of a child to enjoy his or her culture and the impact a proposed parenting order may have on that right;
- the attitude of each parent to the child and to the responsibilities of parenthood;
- any family violence involving the child or a member of the child's family;
- any family violence order that applies to the child or a member of the child's family, if:
  - the order is a final order, or
  - the making of the order was contested by a person whether it would be preferable to make the order that would be least likely to lead to further court applications and hearings in relation to the child.
- any other fact or circumstance that the court thinks is relevant.

A Court must consider the extent to which each parent has or has not previously met their parental responsibilities, and in particular, taken the opportunity to:

- participate in decision-making about major long-term issues about the child; and
- spend time with the child
- communicate with the child, and has:
- met their obligations to maintain the child, and
- facilitated (or not) the other parent's involvement in these aspects of the child's life.

A Court must consider events and circumstances since the separation of the child's parents.

### **Options to resolve child and parenting matters**

There are three general approaches to resolving a matter about parental responsibilities and the arrangements for a child:

1. Parents reach agreement among themselves and the agreement can be recorded in a parenting plan or consent orders;
2. Parents participate in family dispute resolution and subsequently reach agreement, which can be recorded in a parenting plan or consent orders;
3. After participating in family dispute resolution, parents are unable to reach agreement and an application is made to the Court to decide the matter.

Many parents successfully work out arrangements for their children without needing to involve the court. However, if child and parenting matters cannot be resolved by the parents, the Court can be used as the ultimate decision maker. Before making an application to a Court, the parents must first make a genuine effort to resolve the matter by family dispute resolution.

### **Family dispute resolution**

Accredited family dispute resolution practitioners work to assist parents to reach a resolution. A Court will not consider an application for a parenting order unless a certificate from an accredited family dispute resolution practitioner is filed with the application, confirming the parties have attempted family dispute resolution. This requirement applies even if there are pre-existing Court orders in place in relation to the child that is the subject of the application.

In certain circumstances, the court can grant an exemption from the requirement to file this certificate.

## **What happens if agreement can be reached before a matter is decided by a Court?**

If the parents of the child can agree on child and parenting matters, then there is no need for them to go to Court in respect of the arrangements for their children after separation. Where both parents agree on the future arrangements, they can:

- Make a parenting plan, or
- Obtain consent orders approved by a Court.

## **What is a parenting plan?**

A parenting plan is a written agreement which sets out parenting arrangements for a child or children, that have been agreed by the child's parents. Unless a Court orders otherwise, the parents can agree to change a parenting order by entering into a parenting plan.

A parenting plan is not a legally enforceable agreement however, as it is not made or approved by a Court.

## **What are consent orders?**

A consent order is a written agreement that is approved by a Court. A consent order can cover parenting arrangements for children (a parenting order component) as well as financial arrangements such as property and maintenance.

Consent orders have the same legal force as if they had been made by a judicial officer after a court hearing.

In a number of circumstances, consent orders can be made 'on the papers', which means a physical appearance before a judicial officer in a Court is not required.

## **Applying for consent orders**

By making the appropriate application, the Court can be asked to make consent orders in the terms of an agreement between the parents of the children. Such an agreement may include information about the following:

- whether the parents are to have equal shared parental responsibilities or specify the division of parental responsibilities between them
- whether the child or children will spend equal time with each parent or substantial and significant time with a parent and specify details of how the child will spend time with each parent;
- 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, health, religion and cultural aspects, and
- child maintenance for children not covered by the Child Support (Assessment) Act.

## **What happens if parents cannot reach an agreement?**

Courts can make orders about parental responsibilities if the parents cannot agree about the arrangements for their children.

## **Applying for the Court to decide child and parenting matters**

As detailed above, both parents must make a genuine effort to resolve the matter by family dispute resolution.

After mediation or family dispute resolution has taken place unsuccessfully, an application can be made to a Court asking the Court to make orders in respect of parenting matters. Such orders may deal with one or more of the following:

- the person or people with whom a child is to live;
- the time a child is to spend with another person or other persons;
- the allocation of parental responsibility for a child and, if two or more people are to share parental responsibility for a child, how they are to consult with one another about decisions to be made in the exercise of that responsibility;
- how the child will communicate with another person or other persons;
- child maintenance (providing for the financial support of a child who is not subject to the provisions of the Child Support Assessment Act);
- the steps to be taken before an application is made to a court for a variation of the order (to take account of the changing needs or circumstances of a child or the parents);
- the process to be used for resolving disputes about the terms or operation of the order, and
- any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

In the process of deciding an application for orders, the Court applies the considerations and principles set out at the beginning of this information sheet, including what is in the best interest of the child.

## **Who can apply for a parenting order?**

A parenting order may be applied for by:

- either or both parents of the child;
- the child;
- a grandparent, or
- any other person concerned with the care, welfare or development of the child.

## Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you require advice regarding any of the following:

- child and parenting matters
- property settlements
- spousal maintenance
- de facto and registered relationships
- divorce applications
- making a new Will or power of attorney document to take account of changed circumstances
- buying or selling property

Swanwick Murray Roche can provide timely tailored advice about your circumstances. We can offer professional advice and a compassionate approach when dealing with family and personal matters.

Please do not hesitate to contact us by phone on 4931 1888, email at [enquiries@smrlaw.com.au](mailto:enquiries@smrlaw.com.au), via our online enquiry form or by any of the other means detailed on our website [www.smrlaw.com.au](http://www.smrlaw.com.au).