

# Fact Sheet: Essential Family Law Information - Parenting

## Parenting matters under the Family Law Act

Disputes over children are decided under the *Family Law Act 1975* ('the Act'). The Act applies to all children under 18 years of age, whether their parents were married, unmarried, or never lived together.

While we use the term 'parent' in this factsheet, the Act allows parents, a child, grandparents and any other person concerned with the care, welfare or development of a child to make an application to the Court for parenting orders.

The Act does not say that parents have rights over their child; rather, the purpose of the Act is to ensure that the best interests of a child are met.



## Joint decision-making on major long-term issues

If it is safe to do so, and subject to any Court Orders, the Act encourages parents to talk with each other about major long-term issues affecting their child, primarily taking into consideration the best interests of their child. Major long-term issues include education, religion, culture, health, a child's name and significant changes to where a child lives.

Although the Act recommends discussion between parents about major long-term issues in relation to their child, the Court cannot force parents to do so unless there are Court Orders in place. If there is a Court Order for joint decision-making on major long-

term issues, parents are required to consult with each other and make a genuine effort to come to a joint decision.

## Best interests of the child

When determining what parenting orders to make, a Court must primarily consider the best interests of a child. A Court does this by examining the following:

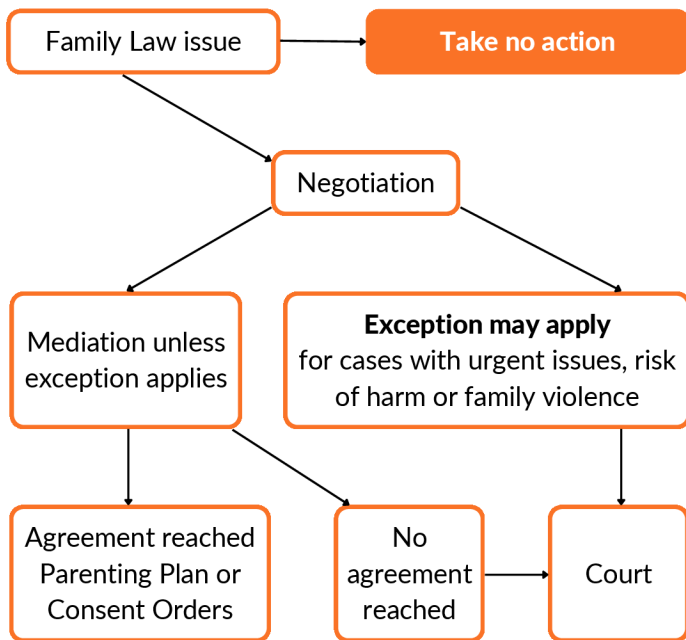
- a) what arrangements would promote the safety of a child (including safety from family violence, abuse, neglect, or other harm), and each person who has care of a child (whether or not a person has parental responsibility for a child);
- b) any views expressed by a child;
- c) the developmental, psychological, emotional and cultural needs of a child;
- d) the capacity of each person who has or is proposed to have parental responsibility for a child to provide for a child's developmental, psychological, emotional and cultural needs;
- e) the benefit to a child of being able to have a relationship with a child's parents, and other people who are significant to a child, where it is safe to do so; and
- f) anything else that is relevant to the particular circumstances of a child.

For Aboriginal or Torres Strait Islander children, a Court must also consider the right of a child to enjoy their culture, as well as the support they will receive to connect to that culture.

There is no hierarchy to the factors that a Court must consider. The Act allows a Court discretion to consider the unique circumstances in each child's matter in a way that places the 'best interests of a child' at the forefront of decision-making.

When looking at the safety of a child, the Court must consider the relevance of any past family violence incidents, abuse and neglect, and family violence orders.

## Overview of legal process



### Which option?



Sometimes, taking no action is the best option. You should consider what is in your child's best interests and your individual circumstances. We recommend you seek independent legal advice to work out the best option.

## Negotiation

Parents should first try to negotiate their own agreement, but only where it is safe for them to do so. Before asking a Court to decide, parents can negotiate between themselves or through a lawyer.

In negotiating an agreement, parents should take into consideration the best interests of a child. An agreement may include where a child lives and who a child spends time or communicates with. It may also include specific topics such as special occasions, education, holidays, sport, religious, cultural and medical matters.

## Family Dispute Resolution (FDR)

If negotiations fail, parents may then try Family Dispute Resolution (FDR) to negotiate an agreement that is in the best interests of a child. You can attend FDR by applying for a grant of legal aid or by

attending at a Family Dispute Resolution Centre such as Upper Murray Family Care or by contacting a private FDR practitioner (for a fee).

A parent can be exempt from trying FDR. For example, FDR may not be appropriate if there are grounds to believe a child will be at risk of harm if there is a delay or a parent will be at risk of family violence should FDR proceed. If you think you are eligible for an exemption, we recommend you seek urgent legal advice.

During FDR, an independent mediator helps parents resolve parenting issues in a safe environment. Anything said in an FDR session is confidential and cannot be used in Court. FDR may be in person, by phone or by video link. If you feel unsafe, a mediator may shuttle back and forth between parents.

FDR allows the parents to be the decision-makers and is more likely to lead to an outcome that suits both parents. It is also cheaper and less stressful than going to Court. Any agreement reached at FDR may be formalised as either Consent Orders or a parenting plan.



## Court

If parents are still unable to resolve the issues in dispute, an application may be made for the Court to make parenting orders. When making a decision, a Judge must consider the best interests of a child.

Court can be a time consuming, costly, and stressful process. There is a risk that Orders made by a Court may be very different to what you want due to decision-making powers for a child being placed in the Court's hands.

If you are served with a Court Application, we recommend you seek urgent legal advice.

### INFORMAL

- Not enforceable
- Can be changed at any time
- No legal consequence if breached

Verbal Agreement

Written Agreement

### Parenting Plan

- Written agreement signed and dated by parties
- Recognised by the Court

### FORMAL

- Enforceable
- Difficult to change
- Legal consequences if breached

### Court Orders or Consent Orders

- Court made orders
- Written agreement approved by the Court

## Parenting plan

A parenting plan is a written agreement about parenting arrangements which is signed and dated by the parents. A parenting plan is not enforceable by a Court but is recognised as an agreement made by parents at a certain time. A parenting plan can be easily changed by the parents signing an updated parenting plan or overridden by an Order of the Court.



## Changes to Final Orders

A Final Order can be changed by mutual agreement between the parents, or by a subsequent parenting plan or Consent Order being agreed to.

If no agreement is reached between the parents, the Act states a Court must not reconsider a Final Order unless:

1. The Court has considered whether there has been a significant change of circumstances since a Final Order was made; and
2. The Court is satisfied that it is in the best interests of a child for a Final Order to be reconsidered.

## Consent Orders

Consent Orders are a written agreement about parenting arrangements which have been drafted into a Court Order format, signed by the parents, and made into Orders by the Court. Generally, Consent Orders don't require you to attend Court.

Consent Orders can be enforced by a Court if not followed and remain in place until a child turns 18 years of age.

## Contravention or Enforcement Applications

If there are Court Orders in place and one parent does not follow these Orders, then the other parent may make a contravention or enforcement application to the Court.

When making an application, a parent may ask the Court to order make-up time, for the Orders to be followed, or for changes to be made to the Orders.

They may also ask for an order for Court costs, compensation, a bond, educational courses, community services, a fine or imprisonment.

However, it is important to note that if a parent chooses not to spend time with their child, a Court cannot make them.

If you are considering making a contravention or enforcement application, we recommend you seek independent legal advice.





## Recovery Orders

If a child is not returned to the care of the parent that they usually live or spend time with, the parent may make an application to the Court for an urgent recovery order to have the child returned to their care.

If a child has not been returned to your care, we recommend you seek urgent legal advice.

## Intervention Orders and parenting arrangements

An Intervention Order may include a condition that permits compliance with a Family Court Order or a written agreement (such as a parenting plan), provided that family violence is not committed in the process. It is important to check the conditions of any Intervention Order as the wording can vary.

## Legal Aid

You may be eligible for a grant of legal aid for negotiations, to attend FDR or Court. Legal Aid will fund a lawyer to represent you and to assist you through the process. Please discuss your eligibility with a lawyer who is on a legal aid panel.

## Disclaimer

Every parenting matter is unique, and we highly recommend you seek independent legal advice that applies to your individual circumstances.

## Further information



[www.fcfcoa.gov.au/fl/children/overview](http://www.fcfcoa.gov.au/fl/children/overview)

[www.legalaid.vic.gov.au/parenting-arrangements-and-child-contact](http://www.legalaid.vic.gov.au/parenting-arrangements-and-child-contact)

[www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/parenting](http://www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/parenting)