

Family Law Fact Sheet

Parenting Orders versus Parenting Plans

Parenting Orders

What is a Parenting Order?

A Parenting Order is a set of orders made by a Court about parenting arrangements for a child. A Court can make a Parenting Order based on an agreement between the parties (Consent Order) or after a Court hearing or trial. A Parenting Order may deal with issues such as:

- with whom a child is to live;
- the time a child is to spend with each parent;
- any aspect of care, welfare or development of the child;
- or any other aspect of parental responsibility.

Is a Parenting Order enforceable?

Yes, a Parenting Order is enforceable.

What happens if the other parent contravenes a Parenting Order?

If a party contravenes a Parenting Order you can apply to the Court for contravention proceedings and the Court may impose a penalty on the party who contravenes the order if there was no reasonable excuse for the contravention.

Depending on the situation and the type and seriousness of the contravention, a Court may:

- vary the primary order;
- compensate for time lost with a child;
- order the person who contravened the orders to:
 - attend a post separation parenting program;
 - pay the legal costs of the other party;
 - participate in community service;
 - pay a fine;
 - serve a sentence of imprisonment.

Who makes a Parenting Order?

A Parenting Order is made by a Court – usually the Federal Magistrates Court or Family Court of Australia.

Parenting Plans

What is a Parenting Plan?

A Parenting Plan is a written agreement entered into voluntarily by the parents of the child and is signed and dated. It covers issues such as:

- with whom a child is to live;
- the time a child is to spend with each parent;
- any aspect of the care, welfare or development of the child;
- or any other aspect of parental responsibility.

Is a Parenting Plan enforceable?

No, a Parenting Plan is not enforceable.

What happens if the other parent contravenes a Parenting Plan?

As a Parenting Plan is not enforceable and is not an Order of the Court the only remedy available if a party contravenes a Parenting Plan is to either engage in family dispute resolution with the other party to discuss the contravention or commence Court proceedings to obtain a Parenting Plan.

If you apply to the Court, the Court must have regard to the terms of the most recent Parenting Plan when making a Parenting Order.

Who makes a Parenting Plan?

A Parenting Plan is not registered or filed in any Court and is entered into by the parents of a child. However, other persons, such as grandparents or step-parents can be included in a Parenting Plan.

Parenting Orders

Who prepares the terms of a Parenting Order?

The terms of a Parenting Order are prepared by:

- The Court in the event there is no agreement by the parties and the matter proceeds to hearing or trial; or
- By either party's lawyers in the event the parties can agree to the terms of the Parent Order (Consent Orders).

How do I vary a Parenting Order?

A Parenting Order can be varied by consent by:

- Filing in Court for variation of Parenting Orders; or
- Entering into a Parenting Plan.

Parenting Orders are subject to later Parenting Plans (unless that Parenting Plan has been made under threat, duress or coercion and unless there is provision in the Parenting Order that it cannot be varied by a Parenting Plan). Therefore your Parenting Order will no longer be of effect when you enter into a subsequent Parenting Plan.

If there is no consent the only way to change a Parenting Order is to apply to the Court to change the Parenting Order. A Court will only change the Parenting Order if you can show that there has been material change in circumstances since the last Parenting Order was made.

What will it cost me to get a Parenting Order?

The cost of your Parenting Order will depend on whether you and the other party can agree on the terms of the Parenting Order by consent (Consent Orders) or whether your matter proceeds to contested hearing or trial.

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Parenting Plans

Who prepares a Parenting Plan?

A Parenting Plan is usually drafted by a counsellor, mediator or family dispute resolution practitioner (who may not be a lawyer or have any legal training).

A Parenting Plan can also be drafted by a lawyer.

Parents can also prepare their own Parenting Plan.

How do I vary a Parenting Plan?

A Parenting plan can be varied by:

- Consent of both parents by entering into a subsequent written Parenting Plan; or
- By applying to the court for a Parenting Order which can be made by the consent of both parties (Consent Order), or after a hearing or trial if there is no consent.

If you apply to the Court for a Parenting Order when you already have a Parenting Plan the Court must have regard to the terms of the most recent Parenting Plan if doing so would be in the child's best interests.

What will it cost me to get a Parenting Plan?

Parenting Plans are usually cheaper to draft than a Parenting Order as they are usually drafted at dispute resolution by the counsellor, mediator or family dispute resolution practitioner. The cost is usually incorporated in the cost of counselling, mediation or family dispute resolution,

You can also draft a Parenting Plan yourself.

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