



Children's care arrangements following separation

Following a separation parents do not have to go to court to put in place care arrangements for their children. As a matter of principle, we encourage our clients to reach an agreement if possible without the need to resort to the Family Law courts. The advantages of reaching an agreement are that it is your agreement and not one imposed on you and the legal fees will be much less than otherwise. That is not to say that a person should reach agreement unreasonably.

Parents who are able to reach an agreement regarding care arrangements for their children have two ways to formalise their agreement. If you and your former partner agree on the future arrangements, you can either make a **parenting plan** or obtain **consent orders** approved by a court.

Parenting Plan

A parenting plan is a written agreement that is made between the parents of a child or children. A parenting plan is a written agreement that sets out parenting arrangements for each child, is signed by the parents of the child, is dated and deals with matters in regards to the care arrangements for the child. Because it is worked out and agreed jointly, you and your former partner do not need to go to court.

Parenting plans can also deal with child support payments.

However, it should be noted that a parenting plan is **not** a legally enforceable agreement. Therefore parents who elect to enter into a parenting plan are often those parents without issues regarding trust, reliability, or dishonesty regarding the other parent. If there are real and serious issues between the parties, then a parenting plan may not be ideal.

Putting it another way, parenting plans are very useful where parents can cooperate and agree about the care arrangements for the child the subject of the parenting plan.

Consent Orders

The second option available to formalise any agreement is to ask the Court to make 'Consent Orders' approving the terms of the agreement between the parents. This is by far the more common way for parents to agree to the care arrangements for the children.

Consent Orders can only deal with the care arrangements for children and cannot deal with child support for the child the subject of the Consent Orders.

Consent Orders can also deal with the following issues regarding the care arrangements for the child:



- whether the parents are to have equal shared parental responsibilities or specify the division of parental responsibilities between them
- with whom the child lives
- whether the children will spend equal time with each parent or “substantial” and “significant” time with a parent, including specific details of how the child will spend time with each parent
- the child spending ‘special days’ with each parent such as Christmas, Easter, birthdays, father’s and mother’s days as examples
- 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 (the school the child will attend), health, religion and cultural aspects, including any travel arrangements

It is important to note that Consent Orders **are** enforceable by the Court. This is because they are filed in the Family Court and become an Order of the Court. In these circumstances, if a parent fails to comply with the Order without the consent of the other parent, it is possible to ask the Court to enforce the Order.

In cases where there is a risk that one parent will not return the child to the other parent after they have spent time with that parent, the other party will find this beneficial.

No Agreement

If parents are unable to reach agreement regarding care arrangements for their children, either parent can make application to the Court for the Court to decide what those care arrangements will be. This process will involve a formal application, response to that application, filing of affidavit evidence and a hearing in the Court, after which the Court will make a decision. Suffice to say this is a potentially lengthy and emotionally draining process, and will likely involve considerable legal expense, and sometimes this is unavoidable.

Conclusion

Resolution of child care arrangements for children after their parents separate can be achieved in a number of ways. Getting the right advice and assistance to explore the alternatives and put those arrangements in place can save you and your children a lot of emotional distress.

If you know someone who may need assistance, call our experienced family lawyers, [Oliver Hagen](#) or [Ken Gray](#) on 02 4731 5899 or email us familylaw@batemanbattersby.com.au for more information.