

PARENTING ORDERS

A parenting order is a court order setting out the particular arrangements for the care for a child. The court will only make parenting orders that are in the child's best interests. A parenting order can be made by the court after hearing evidence and legal recommendations; or without hearing evidence, if the parties agree on arrangements for the child (this is called a consent order).

When can I apply for a parenting order?

Parties are encouraged to agree upon arrangements for the care of their children. If parties are able to reach an agreement they can formalize the agreement by applying to the court for parenting orders to be made by consent.

Where parties cannot agree, they are required to attend family dispute resolution with a registered family dispute resolution practitioner, prior to either party being permitted to make an application for parenting orders from the court. There are some exceptions to this requirement, such as in cases of urgency or family violence or child abuse.

What are the types of parenting orders?

Parenting orders may deal with the person or persons with whom a child is to live, the time a child is to spend with another person, the communication a child is to have with another person and the allocation of parental responsibility for a child.

Parental responsibility:

An order for parental responsibility sets out how the responsibility for major long term issues in relation to the child will be made. These include issues of the child's education, religious and cultural upbringing, health, name and changes to the child's living arrangements.

Living with order:

A living with order deals with the person or persons with whom a child is to live.

Time spent and communication with order:

It is the right of the child to spend time with, communicate with and to continue a relationship with significant people in their lives who are not living with them. The order specifies the time to be spent with a parent or grandparent and the way in which they communicate with each other.

How does the court decide what to do?

When the court decides what parenting orders to make, its main concern is what is best for the child. The main considerations for the court are the benefits to the child of having a meaningful relationship with both parents, the need to protect the child from physical or psychological harm and from being subjected or exposed to abuse, neglect or family violence. The kinds of things the court will look at include the nature of the child's relationship with each parent; any family violence; the likely effect of separating the child from a parent or other significant people; what the child wants to do (depending on the child's level of maturity and understanding); how well either parent can look after the child; the child's background and culture.

Will my child's wishes be heard by the court?

This depends on the age and maturity of the child. The child's wishes may be presented in a family report written by a counsellor nominated by the court or agreed to by the parties. Sometimes, the court will order that the child have separate representation through an independent children's lawyer.

How long will it take?

This depends on the complexity of the case and how many other cases the court is dealing with. Sometimes it can take up to 18 months for your case to go to final hearing. However, the court will hear your case and make interim (temporary) orders within six to eight weeks of lodging your application. Most cases are settled before the final hearing.

This article contains general information only and is provided as legal advice. Professional advice should be taken before any course of action is pursued, or any information here is relied upon. For advice about family law matters contact Tim Robinson, Christine Cowin, Richard Bartram, Adele Katzew or Jessica Caldwell on 9890 3321.

