

Back to Basics – Parenting Arrangements



This factsheet summarises the Ask LOIS webinar on this topic, presented by Anna Swain, Solicitor, Women’s Legal Service NSW on 27 October 2016. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars

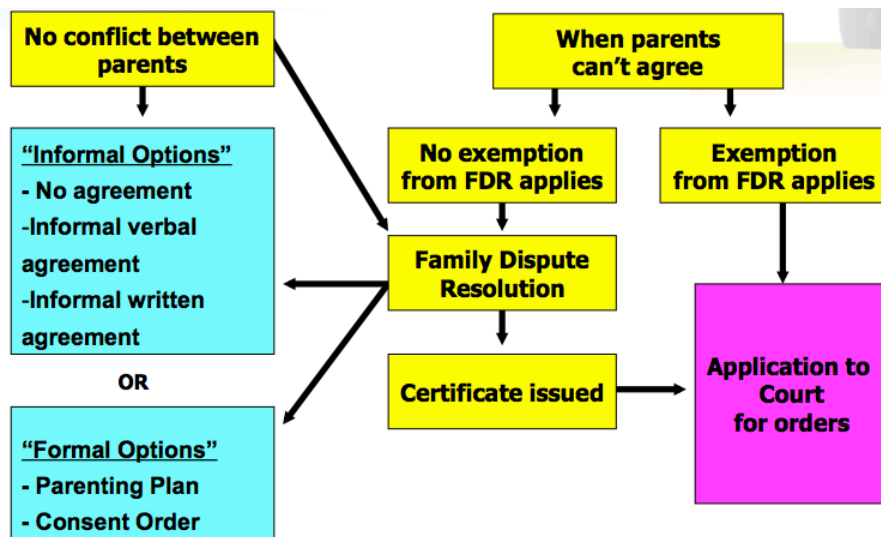
This fact sheet covers:

- Parenting arrangements for children
- The best interests of the child
- How family violence is considered
- Contraventions

Relevant Law: *Family Law Act 1975 (Cth)*

- Applies to all children whose parents are married or living in de facto relationships
- Courts that can hear matters under this legislation are:
 - Family Court of Australia
 - Federal Circuit Court
 - Local Court

Parenting arrangements for children



Compulsory Family Dispute Resolution (FDR)

- All parents must participate in FDR with the other parent before you can make an application to the court
- May become exempt from FDR if have a **s 60I certificate** from a FDR practitioner because for example:
 - Other party failed to attend; or
 - Genuine effort made to resolve; or
 - Not appropriate to continue: eg, domestic violence, child protection issues or urgent
- May be costs implications for not making a genuine effort

Parenting Plans

What is a parenting plan?

- Voluntary written agreement between parents if parents can agree on a plan
- Can be made with the assistance of a Family Relationship Centre, private mediator or without assistance
- Sets out future care arrangements for children such as:
 - Parental responsibility & form of consultation about decisions
 - Who the child lives with and spends times with
 - Communication the child will have with each parent
 - How to resolve future disputes
- Not legally binding - cannot be enforced in court

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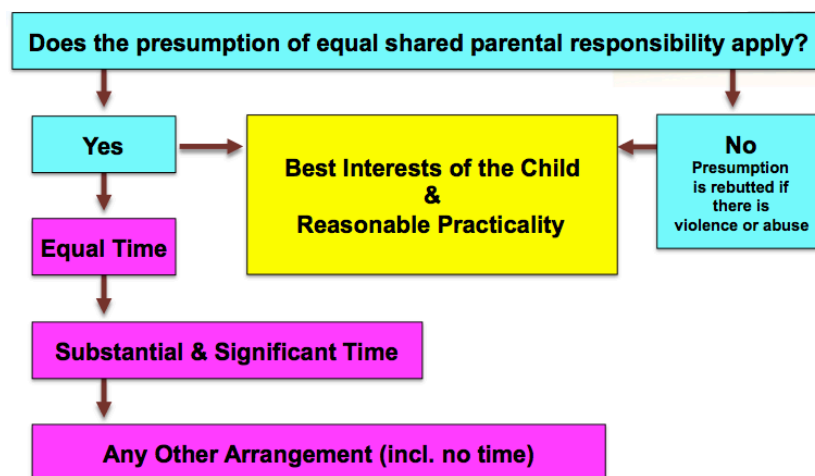
Consent Orders

What are consent orders?

- Parents can formalise their parenting plan by applying for parenting orders by consent
- The parenting plan is registered with the court in the form of Consent Orders
- Enforceable through Contravention Application to Family Law Courts
 - In place until child turns 18
- Can only be changed if there has been a “*significant change in circumstances*”

Court decisions about children

- If the parents cannot agree through FDR or FDR is not appropriate and a s 60I certificate has been given, either party can apply for the court to make a decision
- The court can make final parenting orders, but the parties can always try to reach an agreement between themselves before the final orders are made
- **Parental responsibility:** all parents automatically have parental responsibility for their child until the child turns 18. It refers to making all the important long-term decisions in that child’s life, eg, where they go to school. This does **not** mean the amount of time the child spends with each parent
- The court *presumes* it’s in the child’s *best interests* to order **equal shared parental responsibility (ESPR)**, ie, both parents being obliged to consult one another on major long-term decisions about the child
- However, the presumption of ESPR does not apply in cases of child abuse or family violence
- If the court orders ESPR, the court **must** consider making an order for the child to live with each parent on an *equal basis* or to provide the other parent to have **substantial and significant time** with the child
- The court will reach a decision based on what is in the best interests of the child and what is reasonably practical in the circumstances



Best interests of children

- **Primary considerations:**
 1. Need to protect child from physical or psychological harm or exposure to abuse, neglect or family violence; &
 2. Benefit to the child of having a meaningful relationship with both parents
 - When applying the primary considerations the court must prioritise the safety of children
- **Additional considerations:**
 - Views of the child
 - Nature of the child’s relationship with parents or caregivers
 - Effort made by parents to be involved
 - Practical difficulties of spending time with and communicating with the child
 - Parent capacity to meet child’s needs



- Parent attitude to child and parenting
- Family violence involving child or a member of their family
- Maturity, sex, lifestyle and background of child and parents
- Whether parent is meeting obligation to maintain child

Family violence and abuse – Family Law Act 1975 (Cth)

'Family violence'

- Includes:
 - Assault
 - Socially and financially controlling behavior
 - Exposing a child to family violence
 - Property damage
 - Causing injury or death to an animal

'Abuse' of a child

- includes:
 - Serious psychological harm, which can arise from exposure to family violence; and
 - Serious neglect
 - Assault

How Family courts respond to violence

- Exemption from FDR
- "Form 4" is filed- notifies the court of allegations of family violence and/or abuse
- Independent Children's Lawyer (ICL) can be appointed to act on behalf of the child
- Court can order a Family Report
- Parents can be entered into the Specialist program – 'Magellan Program' through the Family Court that deals with serious allegations of child abuse
- Remedies such as injunctions (eg, one party to be excluded from the family home)

Contraventions of parenting orders

If there is a consent order and/or or a court order and one party does not follow that order, an application can be made to the court.

What can the court order?

- Make up time
- Pay all or part of other party's costs
- Attend post-separation parenting program
- Compensation for expenses incurred
- Variation of order
- Enter into a bond
- Serious cases - community service, fines or imprisonment

Resources

- **Best for Kids** – family law information for children and parents
 - www.bestforkids.org.au
- **Family Relationships Online** – includes factsheets on parenting plans and other topics
 - www.familyrelationships.gov.au
- **Family Law Courts website** – includes toolkits such as DIY Consent Orders
 - www.familycourt.gov.au
- **For more information, see our other Ask LOIS family law webinars and factsheets!**