

Family Law 101 – Parenting Arrangements



This factsheet summarises the Ask LOIS webinar on this topic, presented by Jessica Hannam, Solicitor, Women's Legal Services NSW on 5 November 2012. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars

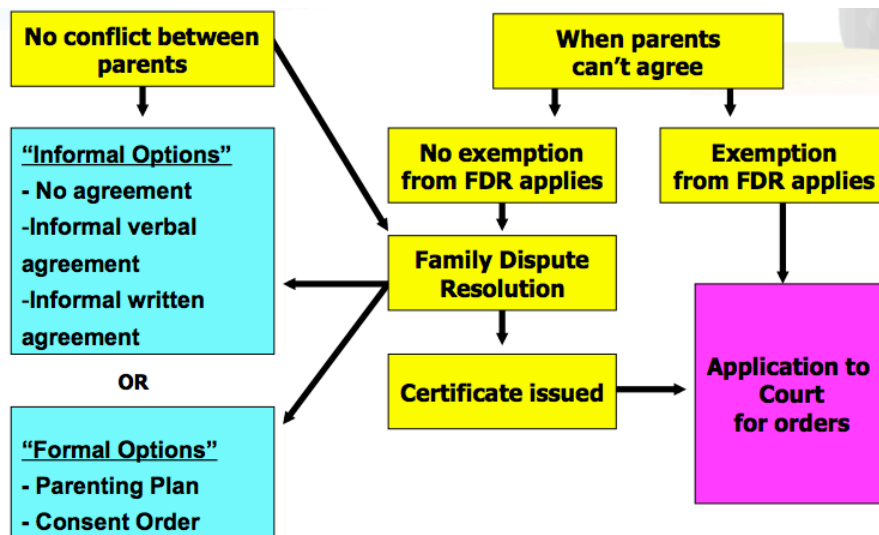
This fact sheet covers:

- 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 or private mediator
- 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

© Women's Legal Services NSW 2014 www.asklois.org.au

This factsheet is not intended to take the place of legal advice given by a qualified legal practitioner familiar with the individual case or subject matter. No responsibility is taken for any loss suffered as a result of the information presented.



- How to resolve future disputes
- Not legally binding - cannot be enforced in court

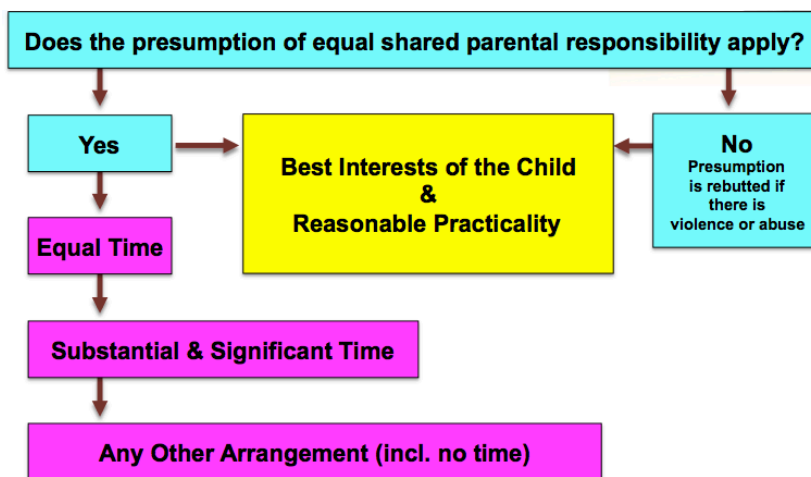
Consent Orders

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 and once approved by
- 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

Broader definition of 'family violence'

- Removes 'reasonable person' test
- Now includes:
 - Socially and financially controlling behavior
 - Exposing a child to family violence
 - Property damage
 - Causing injury or death to an animal

Broader definition of 'abuse' of a child

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

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, father not to approach mother)

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.familylawcourts.gov.au
- **For more information, see our other Ask LOIS family law webinars and factsheets!**