

Changing parenting orders: what constitutes a 'significant change in circumstance'?



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Julia Mansour, Solicitor, Women's Legal Services on 5 August 2014. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- How you can change parenting orders?
- What is a 'significant change in circumstances'?
- Appeals

Changing parenting orders when parents agree

Where parents agree on changes to parenting order, they have 2 options:

1. Parenting Plan

- They can generally modify the orders by writing up a **parenting plan** they both sign and date. This can be done with the help of a Family Relationship Centre
- While this parenting plan is not enforceable in itself, it has the effect of overriding the previous court made orders, making them unenforceable

2. Consent Orders

- They can file an application for consent orders with the family court
- There is no requirement to do family dispute resolution (FDR) prior to lodging an application for consent orders
- These new consent orders would then override the court made orders

Changing parenting orders when parents cannot agree

Where the parents cannot agree on the changes to the parenting orders, they can attempt to have the parenting orders modified by attending FDR at a Family Relationship Centre.

If FDR is deemed inappropriate or is unsuccessful, and the FDR practitioner issues a certificate, either parent can then apply in court with an Initiating Application as though they are starting a new case. They will also need to file an affidavit (legal statement) explaining a *significant change in circumstances* that warrants the original orders being changed.

Note: If a party applies to have the orders varied but there are no significant changes, they can risk having a costs order made against them (having to pay the other side's legal fees).

What is a 'significant change in circumstance'?

The rule in *Rice and Asplund* states that a court should only consider varying parenting orders where:

- There is a change in the parties' circumstances; or
- A new factor has arisen; or
- There is significant evidence not available at the previous hearing

Some examples of things the court may consider to be a significant change in circumstances could include:

- The mental or physical health of a party has deteriorated to the extent that it affects the child's safety or welfare
- A party has spent no time with a child (when they could have) for so long that the child no longer has a relationship with that party



- A party has re-partnered and the new partner is alleged to be a risk to the safety and welfare
- A child is now old enough to express an opinion about the current parenting orders and the child's views that the orders are unsuitable are now obvious from extreme behaviours such as repeated running away or self-harm
- There has arisen a likelihood of violence, or physical or mental harm, to the applicant or a child

When considering whether there has been a significant change of circumstances, the **best interests of the child test** is paramount.

Case examples

Case examples where it was found there **was** a significant change in circumstances

- *SPS v PLS* (2008) Changes in children's age, schooling arrangements and wishes of children; change of opinion by family report writer
- *Catterall v Catterall* (2013) Child experienced developmental delays and psychological difficulties in relation to changeover between parents: these issues not before court with original orders
- *Meyer v Shipton* (2013) A consensual change of location by one parent became difficult for child once at school age

Case examples where it was found there **was no** significant change in circumstances

- *Miller v Harrington* (2008) Mother sought children live with her after they disappeared from father's care for periods of time: court found evidence was before it previously that children were likely to demonstrate emotional and behavioural difficulties if placed with father
- *Langmeil v Grange* (2012) Mother sought children to live with her because of alleged violence of the father: court found mother's allegations of father's violence had previously been tested and rejected

Significant change of circumstances where family violence alleged

Your client should seek legal advice before proceeding. Some considerations will include:

- Were the allegations of violence put before the court the first time around?
- Are the allegations of violence substantially similar to previous allegations?
- Is there corroborating evidence from Police, FACS, schools, doctors?
- Family violence changes to *Family Law Act* may be important

Appeals

- An appeal is not a rehearing of the original decision
- Appeals concern an error of law, eg, the Judge applied the incorrect legal test
- Appeals must be lodged within 28 days of an order being made via a notice of appeal
- The appellant must pay for the notice of appeal (currently \$1270)
- Always tell clients to seek legal advice before appealing!

Referrals

- If client was legally assisted in first court proceedings: best to go back to practitioner who assisted them for prospects of success
- Family Relationship Centre
- Family Court Registry: 1300 352 000
- WLS Advice Line: (02) 8745 6999/1800 801 501
- Local CLC or Legal Aid
- LawAccess: 1300 888 529

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