

FACT SHEET: FAMILY LAW - PARENTING APPLICATIONS

Who can apply for a Parenting Order

Parents, the child, the grandparents or persons concerned with child's welfare & development.

Family Dispute Resolution Requirements

Before making application to the court, you may be required to attend Family Dispute Resolution (FDR). There are exceptions to the FDR requirement. You will not have to attend FDR if:

- You are applying for consent orders.
- You are responding to a parenting application.
- The Court has reasonable grounds to believe that domestic violence or child abuse has occurred or will occur if there is a delay in applying for the order.
- A Person has contravened or shown serious disregard to an order made in the last 12 months.
- It is an urgent matter.
- Parties are unable to participate effectively in FDR.

If you are claiming an exception to FDR, you may go straight to court & file a parenting application. If the exceptions do not apply to you, it will be necessary for you to attend FDR before you are able to file a parenting application with the court. At FDR you may be able come to some agreement with your former partner regarding the child/ren.

If you do not attend FDR or fail to reach an agreement in FDR, you will not be able to file a parenting application with the court unless a FDR Certificate has been issued. The certificate must be filed with the parenting application. The FDR provider may issue one of the following certificates:

1. You did not attend FDR due to refusal or failure of other party to attend.
2. You did not attend FDR because FDR practitioner considered it inappropriate.
3. Both parties attended FDR and made genuine effort to resolve the issue.
4. Both parties attended FDR & did not make a genuine effort to resolve the issue.

Contact Family Relationships for FDR providers (www.familyrelationships.gov.au or 1800 050 321)

Consider Entering into a Parenting Plan

Parents may consider entering into a Parenting Plan. The FDR provider may assist you in drafting 'parenting plan'. This is an agreement between the parents regarding the children. It must be in writing and signed by both parties. It may deal with the following:

- Who the child/ren live with and who they spend time with;
- In considering who the child lives with/spends time with - where reasonably practical & in child's best interest – should consider arrangement where child spends equal time or substantial & significant time with both parents
- Allocation of parental responsibilities;
- Form of consultations re decisions made in exercising parental responsibilities;
- Communication with child/ren;
- Process to resolve disputes;
- Process for changing plan;
- Any aspects re the care, welfare & development of the child.

A Parenting plan is not a Court order – but may be taken into account by the Court.

Application to the Family Court or Federal Magistrates Court

If there is no resolution in FDR or an FDR exemption applies, you may file an application for parenting orders with the Family Court (FCA) or the Federal Magistrates Court (FMC).

An 'Application for Final Orders' is the appropriate form to file in the FCA (form may be downloaded from FCA website at www.familycourt.gov.au). An 'Initiating Application' Form is the appropriate form to file in the FMC (may be downloaded from FMC website at www.fmc.gov.au)

Factors Considered by the Court in determining Parenting Applications

Presumption of 'Equal Shared Parental Responsibility'

In determining a parenting application, a presumption of 'equal shared parental responsibility' will apply unless the court has reasonable grounds to believe a parent of child has engaged in child abuse or domestic violence. Where the presumption applies, the court is likely to make an order that the parents have 'equal shared parental responsibility' for the children. This means that parents will be required to consult each other and decide jointly about major long-term issues effecting the care and welfare of the child.

Equal Time: where the presumption applies – the court must consider whether is it in the best interests of the child and reasonably practicable for the child to spend equal time with both parents.

Substantial & Significant Time: where equal time not reasonably practicable or child's best interest, the court will consider an arrangement where the child spends substantial & significant time with both parents. This means the child will spend time on weekends, holidays and weekdays and both parents are involved in the child's daily routine and events.

When the presumption does not apply: A parent may argue the presumption does not apply if there is a history of domestic violence or producing evidence that is would not be in the best interest of the child/ren for the parents to have equal shared parental responsibility.

Where the presumption does not apply, the Court will make the order having regards to the best interests of the child.

Best Interests of Child: the best interests of the child are the most important consideration of the court. The child the court must consider:

1. The benefit of the child having meaningful relationship with both parents and protecting child from physical or psychological harm.
2. The court will also take into account the following additional considerations:
 - i. Child's views;
 - ii. Child's relationship with each parent;
 - iii. Willingness of each parent to facilitate and encourage relationship with the other;
 - iv. The effect a change of circumstances will have on the child;
 - v. Practical difficulty and expense of child spending time with and communicating with a parent;
 - vi. Parents ability to provide for child;
 - vii. Maturity, sex, lifestyle and background of child and parents;
 - viii. Right of an Aboriginal and Torres Strait Island child to enjoy their culture;
 - ix. Attitude of each parent;
 - x. Any family violence and/or any family violence order that applies;
 - xi. Making an order that is least likely to lead to further court applications; and
 - xii. Any other fact or circumstance considered relevant

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.