



Parenting plans

Information for parents to consider when making a parenting plan

Separation can be painful for everyone involved – especially children. During this challenging time children need support, love and contact with both of their parents and other significant people, such as grandparents. Some certainty for the future is also important for everyone.

The family law system encourages separating parents to work out arrangements for children between themselves without going to court. One way parents can set out the arrangements they wish to put into place for their children is to make a parenting plan.

What is best for your child is the most important thing for you to consider when you make your parenting plan.

What is a parenting plan?

A parenting plan is a voluntary agreement that covers the day to day responsibilities of each parent, the practical considerations of a child's daily life, as well as how parents will agree and consult on important long-term issues about their children. It can be changed at any time as long as both parents agree.

Who can make a parenting plan?

To be a parenting plan under the Family Law Act 1975, the plan must be made and signed by both parents of the child. However, other persons, such as grandparents or step-parents, can be included in a parenting plan.

Parenting plans and the law

A parenting plan can take any form, but to be a parenting plan under the Family Law Act 1975 it must be in writing, signed and dated by both parents. It must be made free from any threat, duress or coercion.

A parenting plan is not legally enforceable and is different from a parenting order, which is made by a court. Parents who make a parenting plan can ask the court to make an order in the terms of that plan. Once made, these orders are legally binding – they have the same effect as any other parenting order made by a court.

If parents end up in court at some later date, the court must consider the terms of the most recent parenting plan when making parenting orders in relation to the child, if it is in the best interests of the child to do so. The court will also consider the extent to which both parents have complied with their obligations in relation to the child, which may include the terms of a parenting plan.

If there is a court order made after 1 July 2006 setting out parenting arrangements, the parents can agree to change those arrangements by a parenting plan (unless the court order says otherwise). This makes it easier for parents to agree on changes without going back to court.

If your parenting plan does change an existing parenting order, you may not be able to enforce those parts of your old parenting order that are inconsistent with the terms of your new parenting plan.

What can be included in a parenting plan?

Your plan will be unique to your circumstances. It should be practical, simple and as concrete as possible.

A parenting plan can deal with any aspect of the care, welfare and development of a child. The kinds of things that may be covered in a plan include:

- how the parents will share parental responsibility and consult about decisions (like which school the child will attend)
- who the child will live with
- what time the child will spend with each parent
- what time the child will spend with other people, such as grandparents
- how the child will communicate with each parent or other people (eg by phone, email or letters)
- what arrangements need to be made for special days, such as birthdays and holidays
- what process can be used to change the plan or resolve any disagreements about the plan
- maintenance of a child*, and
- any other issue about parental responsibility or the care, welfare and development of the child.

* Special rules apply about including child support in your parenting plan (See *Parenting plans, child support and Centrelink* below).

Can I include other things in my parenting plan?

To be a parenting plan under the Family Law Act 1975 your agreement must deal with an aspect of the care, welfare and development of a child.

However, your agreement can still be a parenting plan under the Family Law Act if it includes other things (such as spousal maintenance or property) but those provisions will not be legally enforceable. There are ways to make a legally enforceable agreement about these issues, such as seeking a court order by consent.

Parenting plans, child support and Centrelink

Any changes to the care arrangements for your children can affect child support, income support and family assistance payments.

If you have a parenting plan and Child Support (CS) has a copy of it, CS can base your care levels in your child support assessment on the care levels outlined in the plan.

If your parenting plan specifies amounts for child support payments, CS cannot enforce it unless it is also a valid child support agreement and you or the other parent ask CS to accept it.

There are some conditions that must be met before CS can accept a child support agreement. For example, parents who agree to less child support than the amount assessed under the child support formula can do so, as long as they get legal advice.

The type of agreement you make, and the amount of child support you agree to pay or receive, can affect your child support Family Tax Benefit Part A entitlement. The amount of Family Tax Benefit Part A you receive is based on CS's formula assessment, not the child support agreement.

For help and information contact:

- Child Support on 131 272 or visit www.humanservices.gov.au/customer/dhs/child-support
- Centrelink (Families and Parents Line) on 136 150 or visit www.humanservices.gov.au/customer/themes/families

Other issues to consider when developing your plan

When developing your plan, you need to consider the information contained in this flyer, including the legal implications of making a parenting plan. You may find it useful to include provisions in your parenting plan of the kind that are listed above (see What can be included in a parenting plan?).

You may find it useful to include procedures in your plan for resolving any disputes about the terms of your plan, or for varying the plan if the needs or circumstances of your child change as they get older (eg the child starts primary or secondary school).

When deciding what to include in your plan there are a number of other important issues you need to consider. If parents cannot agree about their children, and decide to go to court, the court will also be required to consider these issues when making a parenting order. These issues are set out below.

Best interests of the child

When you make decisions about your child their needs must come first and the most important thing for you to consider is what is best for your child. Children have the right to know both their parents and the right to be protected from harm. However, the safety of your child(ren) must come first when considering your child's best interest. These are important things to think about. Other things you might want to think about include any views the child has expressed, the child's relationship with both of their parents and other people significant to them (such as their grandparents) and any practical difficulties.

Equal shared parental responsibility

Except where there are issues of violence or abuse, the law presumes that it is in the best interest of a child for the parents to have equal shared parental responsibility. This does not mean that the child should spend equal time with each parent. Rather, equal shared parental responsibility means that both parents have an equal role in making decisions about major long-term issues that affect their children, such as schooling and health care.

If you agree to share parental responsibility, you will need to consult with each other and make an effort to come to joint decisions about long-term issues. However, when the child is spending time with you, you will not usually need to consult on decisions about things like what the child eats or wears because these are not usually major long-term issues.

You may find it useful to include a process in your plan about how you are going to consult with each other when you need to make decisions about long-term issues.

Equal time

If the child spending equal time with each of you is reasonably practicable, and in the best interests of the child, you could consider an arrangement of this kind (eg the child spends one week with you and the next week with the other parent).

What does 'reasonably practicable' mean?

You need to consider whether it is practical to make this type of arrangement for your child based on your circumstances. The types of things you could think about include:

- how far apart you and the other parent live from each other
- the ability of you and the other parent to implement this type of arrangement (eg what hours do you work and how close do you live to the child's school)
- how well you and the other parent communicate with each other and can resolve any problems that come up with the arrangement, and
- the impact the arrangement will have on your child.

Substantial and significant time

If the child spending equal time with both of you is not appropriate, you could consider an arrangement that allows both parents to spend substantial and significant time with the child, provided that this is reasonably practicable and in the best interests of the child.

What is substantial and significant time?

This refers to a child spending time with both parents on a mix of weekends, holidays and regular days and nights. It means both parents are involved in the child's daily routine, as well as sharing in special events (like birthdays) and other events of significance (like weddings).

Difficulties complying with a parenting plan?

If either parent has difficulties complying with a parenting plan which they cannot resolve by agreement with the other parent, there is a range of services available to help, such as counselling and dispute resolution. For example, with the help of a professional you may be able to change your existing agreement or make a new parenting plan.

Contact the Family Relationship Advice Line on 1800 050 321 for information and advice, including referrals to services in your local area that can help, such as a Family Relationship Centre.

Need help to develop a parenting plan?

A range of services are available to help parents reach an agreement about their children, such as counselling and dispute resolution. These services are offered by a range of organisations including Family Relationship Centres. The Family Relationship Advice Line can provide information, advice and referrals to a range of services in your local area. Family Relationships Online can also provide relevant information.

Need further information?

Information about developing a parenting plan, can be obtained from:

- Family Relationship Advice Line **1800 050 321**
- Family Relationship Centres and other family dispute resolution services (call **1800 050 321** to find out what services are near you), and
- Family Relationships Online at www.familyrelationships.gov.au