

How to resolve your parenting dispute



Relevant Laws

The *Family Law Act 1975* (Cth) is the legislation that deals with parenting matters. The same law applies throughout Australia (with some differences in Western Australia).

If arrangements for your children can be worked out between parents (or other parties), there is no need for court involvement. Informal arrangements work well for some families, while others may want something written down in the form of a Parenting Plan. If parents want to make arrangements binding, they might seek court orders, either by consent or through litigation.

The key factor that parents should keep in mind is the best interests of the child. This is the guiding principle that a court would use to determine any parenting dispute.

People are expected to try to resolve their parenting disputes – either between themselves or with the help of a mediator - before applying to court for parenting orders.

Mediation

Mediation is an informal way of resolving disputes with the help of a neutral third party. The goal of mediation is to reach an agreement, which can then be put in writing as a parenting plan or consent orders. Mediation is a process: a session can last hours, or involve multiple sessions over days or weeks in some cases. Different forms of mediation, such as shuttle mediation, allows for progress to be made even when parties cannot be in the same room. The Family Dispute Resolution Practitioner ('FDRP') speaks with with each person separately and works through options.

With the help of an FDRP, you and the other party can work constructively towards resolving some, or all, of your issues. There is no obligation to reach agreement. Mediation is an opportunity to avoid the stress and expense of litigation.

There are a number of free and low-cost mediation services available, including:

[South Queensland Dispute Resolution Centre](#)

[Relationships Australia's Family Relationships Centres](#)

[Pine Rivers Community Legal Centre - Community Family Mediation Service](#)

[Bayside Community Legal Service - Mediation Service](#)

Alternatively, there are private mediators available on a fee-for-service basis.

For further information about mediation, please see our [Mediation factsheet](#) and [Mediation in Parenting matters factsheet](#).

If agreement cannot be reached

If you and the other party do not reach an agreement, you may then apply to the court and the court will decide on parenting arrangements for your children.

With your application to court, you will need to file a certificate from a registered FDRP. This certificate states that you and the other party have tried mediation, or that it is the FDRP's opinion that it is not appropriate for you to go to mediation. This certificate is valid for one year from the date of issue.

Sometimes the courts will allow people to go straight to court without mediation. These exemptions are:

- urgency
- if there has been or there is a risk of child abuse and/or family violence
- if someone can't properly participate due to an incapacity or remoteness from an FDR provider, or
- if your application is about orders made within the last 12 months and the other person is showing serious disregard for the orders.

If you are asking the court for an exemption, you will need to explain why mediation is inappropriate in an affidavit.

Parenting Options

Depending on your situation, there are different ways you can organise parenting after separation.

Informal Arrangement

If things are amicable, you may be able to co-parent without taking any steps to finalise arrangements. If parents can cooperate with each other and stay somewhat flexible, this can work well for the children and parents alike.

Parenting Plan

If parties want more certainty, they may seek to have a written agreement. A signed and dated, written agreement about parenting arrangements is a Parenting Plan. Parenting Plans can be very helpful as they clearly set out what is expected. Plans can be shown to schools, child care centres and other agencies such as Child Support to clarify which parent is responsible for the child at different times.

Some of the topics that may be included in Parenting Plans are:

- who the child lives with
- what time the child will spend with the other parent
- how and when the child will communicate with the other parent
- who has parental responsibility for the child
- a dispute resolution process for parents if disagreements arise
- any other aspect of the child's care or welfare.

Plans are not lodged at or approved by the court, so are not court orders and are not legally binding. They can be used in court proceedings, however, to show what the usual arrangements may have been for a child.

If you think the other party might not stick to a Parenting Plan, Consent Orders may be a better option for you. Consent Orders are legally enforceable.

Consent Orders

If you and the other parent or parties can agree on arrangements for the children, you may want to make them legally binding. To do this, the agreement should be written up in the proper format and filed at court. If the court approves them, the Consent Orders will have full legal effect. This means that if someone does not obey the orders, the other party can ask the court to enforce them or, for serious breaches, impose a penalty.

Even though Consent Orders are 'binding', you are not permanently locked in to them. If the other parent/party agrees, you can enter into a new order to reflect any changes agreed upon. Alternatively, you could update the parenting order by entering into a parenting plan which details any changes agreed upon.

If the other party will not agree to changing the arrangements, you can apply to the court for new orders. There is a threshold question though: before a court will consider any new application you will need to show that there has been a significant change in circumstances.

As well as parenting, Consent Orders can cover property settlement and spousal maintenance arrangements if parties can agree on the terms.

Parenting Orders

If you and the other party cannot agree, you may need to go to court to have a judge decide what arrangements to make for the children. These judge-made orders will be 'Parenting Orders'. There are some necessary steps to take before this can happen.

Refer to our factsheet on 'How to Apply for Parenting Orders' for more information.

Where can I get legal advice?

If you need legal advice about a parenting matter, you can contact BCLS on 3162 3282 to organise an appointment. Our full contact details are below.

Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to Elders past, present and emerging.

Bayside Community Legal Service

Website: www.bcls.org.au

email: info@bcls.org.au

Phone: (07) 3162 3282

Office Hours: 8:30am-4:30pm Monday to Thursday

Address: Wynnum Community Centre
Floor 1, 105 Florence Street
Wynnum QLD 4178
PO Box 103, Wynnum QLD 4178