

# Parenting Orders in the Family Court and the Federal Circuit Court

*This information is based on the law as at August 2013. It is written for the use and benefit of women in the Australian Capital Territory and Region. The information is a general guide to the law and should not be relied upon as a substitute for legal advice.*

## **What is a parenting order?**

A parenting order is an order made by the Court which may state:

- Who your child lives with (this used to be known as *residence* and prior to that *custody*).
- Who your child spends time with or communicates with (this used to be known as *contact* and prior to that *access*).
- Who has parental responsibility for a child. There is now a presumption of equal shared parenting responsibility. This means that you and the other parent have an equal role in making decisions about the long term issues in your child's life, for example, their health, education and religion.

It is important to note that there is no presumption that your children will have equal time or live week about with each parent: the Court must consider what is in your child's best interests.

Once an order is made both parties are legally required to abide by its terms; it is a legally enforceable document.

## **Do I have to have an order?**

You do not have to have Court orders, however, most people find them useful when it comes to organising their lives after separation. If you are at all concerned that the other parent may take the children without your consent or not return the children after agreed time, then it is important to have a parenting order.

It is generally accepted that children need to know when they are going to see the significant adults in their lives. If the routine is formalised by an order, then the child will know exactly when he/she is to see the parent or other person. Most women also like having the certainty of a Court order as something they can rely upon in the future should situations change.

As an alternative to a parenting order, you may prefer to make a parenting plan (see the Centre's fact sheet *How do I get a Parenting Order by Consent?*) For orders made after 1 July 2006, a parenting plan made after the parenting order may effectively change the order. In some exceptional circumstances a subsequent order will be required to vary the order.

### **How do I get a parenting order?**

- If you can agree with the other parent or person involved (eg grandparent, step-parent) you can have your written agreement approved as a 'Consent Order' by the Court, or
- If you cannot agree, you need to apply to the Court to make the order.

See the Centre's fact sheets: *How do I get a Parenting Order by Consent?* and *How do I apply to the Federal Circuit Court for a Parenting Order?*

### **Who can apply for an order?**

You can apply if you:

- are a parent, regardless of whether you are separated, divorced or never married or lived with your child's father;
- have been in a same sex relationship and your child was born as a result of IVF or some other type of artificial insemination or donor program;
- are the child's grandparent or step-parent; or
- are a person concerned with their care, welfare and development of a child.

However, most applicants (the person bringing the application) or respondents (the person responding to the application) in Court proceedings will be the child's parents.

### **When can I file an application?**

An application seeking parenting orders can be sought at any time after separation. It is compulsory to attend Family Dispute Resolution (FDR) before filing an application for a parenting order unless you are excused from doing so.

### **What does a parenting order look like?**

All parenting orders are different as the orders reflect arrangements for children in different circumstances. It is important to get legal advice about your orders before they are signed.

A typical order in relation to a child of school age could read as follows:

- 1) The Mother and Father shall have equal shared parental responsibility for the child of the relationship SARAH JANE JONES (DOB 1.3.2008).
- 2) The child shall live with the Mother.
- 3) Each of the parties shall take all reasonable steps to ensure that the child spends time with the Father as follows:
  - a) each alternate weekend from 5pm Friday to 9am Monday;
  - b) each alternate Wednesday from after school until the start of school Thursday;
  - c) half of all ACT school holiday periods, commencing with the second half of the 2013 ACT school holiday periods and each alternate year thereafter, and for the first half of the 2014 ACT school holiday periods and each alternate year thereafter;

- d) each Tuesday at 7pm, by telephone, with the Father to telephone the child;
- e) each Fathers' Day from 9am to 5pm, with the child to also spend each Mothers' Day with the Mother; and
- f) for two hours on the child's and the Father's birthday, should those birthdays fall on days when the child would not otherwise be with him, with the child to also spend two hours with the Mother on each of their birthdays, should they fall on days when the child is with the Father.

or such other time as the parties may agree.

### **What if I have a young child?**

If your child is a young child then the amount of time the child spends with the other party is usually something less than in the orders in the above example. If your child is very young then it will usually not be appropriate for the young child to stay overnight with the other party. It will depend upon how much time the parent or other person has had with your child to date and their existing relationship with your child. There are also practical considerations around young children's routines and whether or not the child is breast-feeding.

### **How detailed should the orders be?**

In some cases, it is a good idea for the orders to be very specific, and in other cases it is better if they can be as flexible as possible. This will depend upon how much communication, trust and goodwill you have with the other parent or person.

Sometimes you need to spell out who will be responsible for your child's transport to and from seeing the other person. Usually the person who your child is visiting is the one responsible for the transport there, and the person who your child is returning to is responsible for the transport back again.

### **What if there is a history of domestic violence?**

In many cases involving parenting orders in the Family Court or Federal Circuit Court there are also Domestic Violence Orders in the ACT Magistrates Court or a NSW Local Court. You must be very careful to let each of the Courts know of any orders that have been made in other Court(s) so that there is no conflict between the two lots of orders.

You can mention a Family Court or Federal Circuit Court order in a Domestic Violence Order, for example:

That the respondent shall not come within 100m of the applicant *except for the purposes of spending time with the children pursuant to an order of the Family Court or Federal Circuit Court.*

Sometimes when there has been a history of domestic violence it is better if you do not meet the other parent or person involved when your child is picked up or dropped off. Instead you can drop off and pick up at a changeover centre (such as Marymead: see below), use a changeover service, or drop off and pick up at a public place, for example, McDonalds, or, if there is a serious question of safety, near a

police station.

### **Can I ask for a supervisor?**

It may be appropriate for someone else to be present when the other parent or person spends time with your child if, for example:

- your child is very young;
- your child has not seen that person for a long time;
- your child has been or is at risk of being exposed to domestic or family violence or abuse; or
- there are concerns about the other parent's capacity to care for your child.

Sometimes the visits should be supervised for only a short period of time, until your child feels comfortable with the person. If your child has been abused someone else should be present on a long-term or indefinite basis.

If you have a high level of conflict with the other parent or person and you have an existing order, you can apply to enter the Marymead Contact Program. The Program provides a venue for supervised contact and changeovers. See [www.marymead.org.au](http://www.marymead.org.au) for more information.

If your relationship with the other parent or person is a good one, and there is no history of domestic violence, then you could be the supervisor. Otherwise, you could use a relative, a mutual friend or a contact centre.

### **What does the Court consider when making parenting orders?**

The Court is required to firstly consider the presumption of equal shared parental responsibility. The presumption will not apply if the Court believes there has been family violence or child abuse and it may be rebutted if there is evidence that it is not in the best interests of the child.

If equal shared parental responsibility applies, the Court must consider whether or not an *equal time* parenting arrangement would be reasonably practicable and in the best interests of your child.

In cases where equal time will not be appropriate, the Court will then assess whether or not it is reasonably practicable, and in your child's best interests, to have *substantial and significant* time with the other parent or person. Substantial and significant time includes week days (not just weekends and holidays) to enable both you and the other parent to be involved in your child's daily routine and special events.

In working out what is reasonably practicable the Court will consider things like:

- how far apart you live from the other parent or person;
- your capacity to communicate with each other and resolve difficulties; and
- the impact that such an arrangement would have upon your child.

It therefore may not be reasonably practicable for the other parent or person to see your child more than on alternate weekends if you have difficulties communicating

with each other. Sometimes a changeover at school is best in these situations.

### **What if the other person does not comply with the order?**

If the other parent or person does not do what the order says then they are 'in contravention' of it. If this happens on a regular basis then you can make a Contravention Application to the Court. The Court can:

- Enforce an order to compel a person to comply with it.
- Make a further order that discharges, varies or suspends the order without the need for a separate variation application to be filed.
- Penalise the person breaching the order.

The person may have a defence to your Application if they can establish to the Court's satisfaction a 'reasonable excuse' for contravening the orders. This may be, for example, a claim that a child did not spend time with the other parent because the other parent was under the influence of alcohol or drugs the last time they cared for the child.

You will have to go through FDR and obtain a certificate before you make a Contravention Application *unless* the contravention relates to an order that has been made in the previous 12 months and the Court is satisfied that there has been a serious disregard of the obligations imposed by the order.

### **Can I change the orders at a later stage?**

You may find that orders made, either by consent or by a Judge, need to be changed at some stage in the future.

If there has been a significant change of circumstances in relation to your child, such as re-partnering, re-marriage, recovery from mental illness or drug addiction, or other significant changed circumstances for the children, you can make a further application to the Court to vary the existing orders. If you can agree about a change to the order you can make an application for consent orders.

### **Is there anything else I should know about?**

It is very important that when you separate you make arrangements for your children that you believe are in your child's best interests, rather than agree to something simply to 'keep the peace' because the other person has asked for it.

## Where do I go for information and advice?

<b>Family Law Courts National Enquiry Centre</b>	1300 352 000 <a href="http://www.familylawcourts.gov.au">www.familylawcourts.gov.au</a>
<b>Family Relationships Centre</b> Family Relationship Advice Line (Weekdays 8am to 8pm, Saturdays 10am to 4pm) Canberra Family Relationship Centre (Monday to Friday, 9am to 5pm)	<a href="http://www.familyrelationships.gov.au">www.familyrelationships.gov.au</a> 1800 050 321 6122 7190
<b>Relationships Australia</b>	1300 364 277 <a href="http://www.relationships.org.au">www.relationships.org.au</a>
<b>Marymead</b>	6162 5800 <a href="http://www.marymead.org.au">www.marymead.org.au</a>

### About the Women's Legal Centre

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Social Inclusion Division of Civil Justice and Legal Services Group, Commonwealth Attorney-General's Department.