



Parenting Plans and Consent Orders

A workbook for parents

Before you start...

This workbook has been provided for your benefit and is not intended to be a substitute for legal advice. It is only intended to provide you with a guide to the issues that you should consider before you attempt mediation or enter into a Parenting Plan or Consent Orders.

Some of the questions in this workbook may not be relevant to your particular situation. If you cannot agree on some issues raised in this workbook, don't let it get in the way of reaching an agreement on other parts. You can always leave some issues to be agreed later.

It is strongly recommended that before you sign any agreement in relation to your children that you obtain legal advice.

This booklet is not suitable for instances where there is a risk to you or your children's safety and wellbeing. If this applies to your situation or you have concerns about these issues please put down this booklet and seek legal advice.

Elizabeth Evatt Community Legal Centre accepts no responsibility for any loss suffered by any person who uses or relies on the information contained in this booklet, or for any loss which may arise due to error or omission in the information. Legal advice from a lawyer should be obtained.

This booklet was adapted from a booklet prepared by the Women's Law Centre of WA Inc.

© Women's Law Centre WA (Inc) 2017

This work is protected by copyright. All rights reserved. Apart from any use permitted under the Copyright Act, no part of this publication may be reproduced by any process or by any means without prior written permission. Inquiries should be made to the Women's Law Centre of WA Inc (WLCWA).

Information is current as at June 2018.



elizabeth evatt
community legal centre

EECLC is a not-for-profit community legal centre funded by the Commonwealth Attorney General's Department and NSW Government to provide quality legal services. We also gratefully accept donations. Donations over \$2.00 are tax deductible and receipts can be provided upon request. Donations in the form of cash or cheque can be made in person at our office or via mail.

Your donation will help us continue to assist people like you.

DONATION FORM

Name _____

Address _____
(where to send receipt)

Amount \$ _____

Page intentionally left blank

Contents

Introduction.....	6
Independent Legal Advice	7
Social Media - Beware	7
What is a Parenting Plan?	8
Can I change my Parenting Plan?	8
What are Consent Orders?	9
Can I change my Consent Orders?	9
Things to Consider... ..	10
Parenting decisions.....	10
Live with... ..	10
Spend time with... ..	11
Supervision of the Child	11
Safety Rules	12
Significant other people.....	12
Communication.....	13
Other Concerns.	14
Interstate and International Travel.....	14
Changeovers.....	15
Special Occasions	16
Health	18
Education and extracurricular activities	19
Other matters to consider	21
Changes and Reviews.....	22
What if we cannot agree on a Parenting Plan or on Consent Orders?	22
Weekly Planner	23
Monthly Planner	24
60CA Child’s best interests paramount consideration in making a parenting order ..	25
60CC How a court determines what is in a child’s best interests	25
61DA Presumption of equal shared parental responsibility when making parenting orders	27
65DAA Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances	28
Need more information	31

Introduction

The *Family Law Act 1975* encourages parents to try and reach an agreement between themselves about the care of their child/children without going to Court.

There are two ways in which you can set out in writing any agreement between yourself and the other parent and they are:

- Parenting Plans
- Consent Orders

Regardless of which one you choose the best interests of your child is the most important thing for you to think about when trying to reach an agreement.

The overriding principle of the Family Court is the 'best interests of the child.' The right of the child to safety and protection from physical or psychological harm is paramount.

The Family Law is now very clear that the safety of the child is more important than the issue of maintaining a meaningful relationship with both parents.

If you have any concerns about the safety of your child you need to consider what is in their best interests. **You should give greater weight to the need to protect children from physical or psychological harm over the benefits of the child having a relationship with the other parent.**

The Family Court will consider:

- the extent to which a parent has taken or not taken the opportunity to participate in making decisions about major long term issues in relation to the child and to spend time and communicate with the child; and
- the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.

If you are seeking orders concerning children you should read and consider the following sections of the *Family Law Act* which are at the end of this booklet.

- 60CA
- 60CC
- 61DA
- 65DAA

Independent Legal Advice

Whether or not you choose to have a Parenting Plan or Consent Orders you should obtain independent legal advice about the effect and consequences of the plan or orders that are being proposed before you sign it.

At the end of this booklet we have included a weekly and monthly planner for you to use when trying to reach an agreement. Examples of what should be included in a Parenting Plan or in Consent Orders can be obtained from a lawyer, the Family Court of Australia, Federal Circuit Court or from organisations such as Relationships Australia who provide mediation services.

Social Media - Beware

We strongly recommend you **do not** use social media or internet sites, eg Facebook or Twitter, to discuss or comment on your separation and/or negotiations involving your children. You should also be careful about what you say in emails and text messages.

This information can be used in evidence in court proceedings, such as being attached to an affidavit filed in the Family Court.

It is important not to discuss or publish such information on public sites.

What is a Parenting Plan?

A Parenting Plan is an agreement between parents about how their child will be cared for.

A Parenting Plan can include anything that parents need to agree about in relation to their child and covers issues such as:

- Where the child lives and who the child spends time with;
- How you will communicate with each other;
- How and when you will each communicate with the child;
- Processes that you will use for resolving any disputes
- Any other aspect of the care welfare and development of the child.

The most important thing to think about when making a Parenting Plan is what is in the best interests of your child.

Because a Parenting Plan is worked out between parents it means that you can both have more control over the process and can save a lot of time, money and distress

A Parenting Plan can be in any form, but to come within the *Family Law Act* it must:

- Be made free from duress or coercion
- Must be in writing
- Must be signed and dated by both parents

It is a good idea that once the agreement has been signed, each parent keep a copy of the agreement. A Parenting Plan can also be provided to the Child Support Agency who can use it to make decisions about your child support assessment.

Please note, however, that a Parenting Plan is not legally enforceable. This means that if you or the other parent does not comply with it, there are no remedies available. If you would like your Parenting Plan to be enforceable you should consider making an application to the Family Court for Consent Orders.

Can I change my Parenting Plan?

Yes. You can change your Parenting Plan at any time so long as you and the other parent agree to the changes.

To change your Parenting Plan you and the other parent can prepare a new Parenting Plan, you can add or delete parts, add new sections or create a whole new plan. There are a number of services available that can assist you in negotiating a plan with the other parent and with writing up a Parenting Plan.

Before signing or changing your Parenting Plan you should get independent legal advice about the plan or any changes that you want to make.

What are Consent Orders?

The Family Court encourages families in dispute to reach an agreement about the care arrangements for their children.

If you want your agreement to become a legally enforceable you can apply for 'Consent Orders' to be made without having to actually go to Court. You can do this by completing a Form 11 Application for Consent Orders. There is a kit, available on the Family Court website, which you may find helpful. Once Consent Orders have been made by the Court they are legally enforceable. It is recommended that before you sign Consent Orders that you seek independent legal advice.

Can I change my Consent Orders?

Yes.

If you both agree, you can change your Consent Orders by either:

1. Filling out a new Application for Consent Orders and filing it with the Family Court; or
2. By creating a Parenting Plan.

Before signing or changing Consent Orders you should get independent legal advice about the orders or any changes that you want to make.

If you want to change your Court Orders or Parenting Plan and the other party does not agree you should seek legal advice.

Things to Consider...

Parenting decisions

Parental Responsibility is a responsibility to make decisions to ensure that a child's needs are met. Decisions can include (but are not limited to) things such as where the child lives, medical treatment, education, religious upbringing, passports and the name of the child. Generally there is a presumption that parents will equally share the decision-making in relation to their child.

What types of decisions do you feel should involve both of you (ie. Where the children live, medical decisions, religious decisions, where the children go to school, the types of after school activities that the children participate in?)

Live with...

(In the past, this has been referred to as residence or custody)

There is no presumption that a child has to live with both parents for an equal amount of time. For equal time to be considered it must be shown to be in the best interests of the child and it must also be reasonably practical. It may not be in the child's best interests to spend equal time between both parents in situations such as where the child is very young, the child lives too far away from the other parent, where one parent works away or long hours or where the child may have special needs.

If equal time is not in your child's best interests and/or it is not reasonably practical then you need to consider the child spending substantial and significant time with either yourself or the other parent. This includes spending time with the child on weekends, holidays, weekdays, being involved in the child's daily routine and on important days.

Will the child live with you both equally?

Who will the child live with?

Where will the child live?

Spend time with...

(In the past, this has been called contact or access)

If the child does not live with you when will the child spend time with you?

If the child does live with you when will they spend time with the other parent?

Supervision of the Child

Who else is allowed to look after the child?

(This can include grandparents or other relatives, babysitters, family friends)

What happens if either you or the other parent is not able to look after the child (this might be because of work commitments, illness etc)

Do you want the child to:

- Go to the other parent (or yourself);
- Be placed into childcare
- Be cared for by another person?

Safety Rules

Can the child ever be left home alone – if so at what age?

Are the children allowed to catch public transport, fly or walk on their own – if so in what circumstances?

Do you have any other safety rules that you think are important?

Significant other people

Who are other important or significant family and friends that the children can spend time with from both your family and the other parent's family?

When can the child spend time with these 'significant' other people?

Communication

What do you think is the best way for you to communicate with the other parent about any issues relating to the child?

1. By telephone;
2. In writing – email, text message or letter;
3. Using a communication book; or
4. By other means.

If the child is not in your care, how and when do you want to be able to speak to or communicate with your child?

How do you want the other parent to talk about you in front of the child?

How will you talk about the other parent in front of the child?

Other Concerns.

Interstate and International Travel

Do you agree to the child being taken out of NSW for holidays?

Do you want to be able to take the child out of NSW for holidays?

What are the conditions that should apply if you or the other parent wants to be able to take the child out of NSW or Australia (ie. This can include a copy of flights, details of an itinerary and contact details for where the child is staying)

What information would you want to know if the other parents took the child on holiday either interstate or internationally?

Does the child currently have a passport?

Do you agree to the child having a passport?

If so who will keep the child's passport and where will it be kept?

Changeovers

Where will changeovers happen?

When will changeovers happen?

How would you like the other parent to let you know if they are running late or not going to be able to get to the changeover?

How will you let the other parent know if you are running late or are not going to be able to get to the changeover?

Is there anything else that you think should happen during a changeover?

Special Occasions

What do you want to happen during the following times?

- Child's birthday

- Your birthday

- Other parent's birthday

- Easter

- Christmas (including Christmas Eve and boxing day)

- Mother's Day

- Father's Day

- Other religious holiday or important family event

Health

Will the child be immunized?

How will you let the other parent know if the child is sick?

How do you want the other parent to let you know if the child is sick?

In the event of a medical emergency – how do you want to be notified by the other parent or how will you let the other party know what has happened?

If the child is sick or unable to attend school or daycare who will look after the child?

Who will be responsible for taking the child to any medical or dental appointments and who will be responsible for paying the fees?

Are there any other special medical or health matters in relation to the child (this can include behavioural/diet/medical etc)?

Education and extracurricular activities

Will the child be able to stay at the same school?

If the child needs to change schools or needs to move into primary or secondary school how will you agree on a new school for the child both now and in the future? Or what school would you like the child to be able to attend?

Who will get copies of school reports or do you want the school to send copies to both of you?

Who will let the school know that your family's circumstances have changed?

Will you both attend parent teacher evenings and school events, or how will you decide who can attend?

Who will be the primary contact for the school in the event of an emergency?

Do you want the child to receive religious education at school?

What extra-curricular activities would you like the child to be involved in?

When are these activities on and where are they held?

Other matters to consider

Are you going to give the child pocket money? If so how much?

Are there any specific religious matters that you want the child to be exposed to or involved in?

Are there any specific cultural matters that you want the child to be exposed to or involved in?

Will you have regular discussions about the child with the other parent and how/where will these discussions occur?

What do you want to happen if the other parent refuses to speak to you, you cannot agree on an issue or you feel they are being unfair?

Changes and Reviews

As you or the other parents circumstances change you may need to change your agreement in order to include changes to Family Law in Australia or the age of your child.

You and the other parent can agree to review your orders or plan on a regular basis and if so you should include any proposed reviews into your plan or orders..

How often do you think that you should review your plan or orders?

What if we cannot agree on a Parenting Plan or on Consent Orders?

If you cannot agree on arrangements for your child there are several options available to you including:

1. Attending mediation with an Accredited Family Dispute Resolution Practitioner; or
if you have already been to mediation then
2. You may need to make an application to the Family Court for the Court to decide what is best for your children.

It is recommended that you seek legal advice in the event that you do not agree to ensure that you understand and are aware of all of the options that are available to you and what the best course of action may be in your circumstances.

It may be helpful to use the Weekly or Monthly Planners below to try and draw up or colour in the days and times that you or the other parent are to spend with the child.

Weekly Planner

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
8.00							
9							
10							
11							
12							
1							
2							
3							
4							
5							
6							
7							
8							
Overnight							

Monthly Planner

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1							
Week 2							
Week 3							
Week 4							

60CA Child's best interests paramount consideration in making a parenting order

In deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

60CC How a court determines what is in a child's best interests

Determining child's best interests

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

Primary considerations

- (2) The primary considerations are:
 - (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
 - (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
- (2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).
- (3) Additional considerations are:
 - (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
 - (b) the nature of the relationship of the child with:
 - (i) each of the child's parents; and
 - (ii) other persons (including any grandparent or other relative of the child);
 - (c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:
 - (i) to participate in making decisions about major long-term issues in relation to the child; and
 - (ii) to spend time with the child; and
 - (iii) to communicate with the child;
 - (ca) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child.

- (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or
 - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
- (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (f) the capacity of:
 - (i) each of the child's parents; and
 - (ii) any other person (including any grandparent or other relative of the child);to provide for the needs of the child, including emotional and intellectual needs;
- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- (h) if the child is an Aboriginal child or a Torres Strait Islander child:
 - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
 - (ii) the likely impact any proposed parenting order under this Part will have on that right;
- (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- (j) any family violence involving the child or a member of the child's family;
- (k) If a family violence order applied, or has applied, to the child or a member of the child's family – any relevant inferences that can be drawn from the order, taking into account the following:
 - (i) the nature of the order;
 - (ii) the circumstances in which the order was made;
 - (iii) any evidence admitted in proceedings for the order;
 - (iv) any findings made by the court in, or in proceedings for, the

order;

(v) any other relevant matter;

(l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

(m) any other fact or circumstance that the court thinks is relevant.

Consent orders

(4) N/A - Section repealed

(5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

Right to enjoy Aboriginal or Torres Strait Islander culture

(6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

(i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and

(ii) to develop a positive appreciation of that culture.

61DA Presumption of equal shared parental responsibility when making parenting orders

(1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).

(2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

(a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or

- (b) family violence.
- (3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.
- (4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

65DAA Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances

Equal time

- (1) Subject to subsection (6), if a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
 - (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
 - (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
 - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend equal time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

Substantial and significant time

- (2) Subject to subsection (6), if:
 - (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
 - (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents; andthe court must:
 - (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
 - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and

- (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

Note 1: The effect of section 60CA is that in deciding whether to go on to make a parenting order for the child to spend substantial time with each of the parents, the court will regard the best interests of the child as the paramount consideration.

Note 2: See subsection (5) for the factors the court takes into account in determining what is reasonably practicable.

- (3) For the purposes of subsection (2), a child will be taken to spend **substantial and significant time** with a parent only if:

- (a) the time the child spends with the parent includes both:

- (i) days that fall on weekends and holidays; and
- (ii) days that do not fall on weekends or holidays; and

- (b) the time the child spends with the parent allows the parent to be involved in:

- (i) the child's daily routine; and
- (ii) occasions and events that are of particular significance to the child; and

- (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

Reasonable practicality

- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:

- (a) how far apart the parents live from each other; and

- (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and

- (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and

- (d) the impact that an arrangement of that kind would have on the child; and

(e) such other matters as the court considers relevant.

Note 1: Behaviour of a parent that is relevant for paragraph (c) may also be taken into account in determining what parenting order the court should make in the best interests of the child. Subsection 60CC(3) provides for considerations that are taken into account in determining what is in the best interests of the child. These include:

- (a) (the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent (paragraph 60CC(3)(c));
- (b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents (paragraph 60CC(3)(i)).

Note 2: Paragraph (c) reference to future capacity—the court has power under section 13C to make orders for parties to attend family counselling or family dispute resolution or participate in courses, programs or services.

Consent orders

- (6) If:
- (a) the court is considering whether to make a parenting order with the consent of all the parties to the proceedings; and
 - (b) the order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child;

the court may, but is not required to, consider the matters referred to in paragraphs (1)(a) to (c) or (if applicable) the matters referred to in paragraphs (2)(c) to (e).

- (7) To avoid doubt, subsection (6) does not affect the application of section 60CA in relation to a parenting order.

Note: Section 60CA requires the best interests of the child to be the paramount consideration in a decision whether to make a particular parenting order.

Need more information

You can get some more information from the following places:

Family Relationship Advice Line 1800 050 321

Family Relationships Online www.familyrelationships.gov.au

Family Law Courts 1300 352 000
www.familylawcourts.gov.au
Federal Circuit Court www.federalcircuitcourt.gov.au

Law Access NSW 1300 888 529
www.lawaccess.nsw.gov.au

Legal Aid NSW 9219 5000
www.legalaid.nsw.gov.au

Best for Kids www.bestforkids.org.au

Relationships Australia 1300 364 277
www.relationships.com.au

Women's Legal Service NSW 87456988
www.wlsnsw.org.au