



## Factsheet - Children

### *Understanding Terminology*

Important changes have been made to the Family Law Act (Cth) concerning children. Terms such as residence, contact and specific issues orders are no longer used. Orders now refer to who a child is to "live with" and who a child is to "spend time with" or "communicate with". Each parent is now presumed to have equal shared parental responsibility, unless it is evident it is not in the interests of the child. Parental responsibility can be divided by the making of orders as to who a child is to live with, who a child is to spend time with or communicate with. This has no significant effect on existing residence, contact or specific issues orders. As a parent you are encouraged to be involved in the upbringing of your children after separation regardless of where the children actually live.

### *Making Decisions About Parenting Your Children*

There are a variety of ways in which you and your partner can resolve issues about your children after separation. The first thing to remember is that the children do not belong to one or other of you. They are entitled to know and have contact with both of their parents. Once that has been accepted it may be time to consider your options.

### *Counselling*

If you are unable to agree about the arrangements for your children after separation you can attend counselling or mediation services to attempt to resolve your disputes. These processes will bring you and your former partner together to talk about your children and how best you might be able to parent them. If you receive legal aid, the Legal Aid Commission of Tasmania will require you to participate in a mediation session in an attempt to resolve the dispute without resorting to court proceedings.

### *Parenting Plans*

If you can agree about how you will both continue to parent your children then you may choose to prepare and register a parenting plan in the Family Court. A parenting plan is a written agreement between the parties, which deals with issues relating to parental responsibility. To be registered, a parenting plan must be written and made with either the assistance of a family and child counsellor, or after both parties have received independent legal advice. Once registered, it has the same effect as a court order. The Family Court will provide you with a kit if you wish to prepare these orders yourself. Otherwise you may choose to seek the assistance of a solicitor.

### *Consent Orders*

Consent Orders can include orders as to who a child is to live with, spend time with or communicate with as are required to spell out the terms of your agreement. Unlike a parenting plan, parties do not need to have had the assistance of a counsellor or legal advice to lodge the application. If either one of you fails to carry out the terms of the agreement, the other can enforce the agreement through the Family Court. Many people choose this option as it provides certainty for them and their children.

### *When You Cannot Agree*

If you are unable to agree about parenting your children, you may need to lodge an application for orders in the Family Court. If you have not been to counselling or tried mediation, it might be best to do so prior to asking the court to decide. Many things are taken into account by the Family Court

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when it makes decisions about children. The primary considerations are the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse or neglect or family violence. The court will also take into account additional considerations such as the nature of the relationship between the children and parents; the ability of the parents to provide for the emotional, moral and physical well-being of the children; relationships the children have with other people like grandparents and the likely effect of any order on those relationships. In looking at all these things the court is trying to determine what course of action will be in the children's best interests.

**RELEVANT LEGISLATION**

Family Law Act 1975 (Cth)

**CONTACTS**

Family Court of Australia  
Family Relationship Advice Line  
Relationships Australia

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*The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to [info@legaid.tas.gov.au](mailto:info@legaid.tas.gov.au).*