



BRIESE LAWYERS FACTSHEET



Children - Parenting Arrangements

One of the most difficult aspects of a relationship breakdown is implementing arrangements for the children's well-being and their future.

There is no automatic rule that children should live with either their mother or their father after separation.

Parenting Plans

The best arrangement for a child/ren upon the breakdown of a relationship is one where both parents are child-focused, minimize ongoing conflict and come to an agreement in relation to the short term and long term care for the child/ren. It is common for children to live primarily with one parent, and then spend time and communicate with the other, as agreed between the parties. Such agreements are called "*Parenting Plans*". To read more about Parenting Plans, refer to our factsheet entitled "**Parenting Plans**".

Counselling, mediation and other services are available to assist the parents in reaching agreement.

Parenting Orders

If parents are unable to come to an agreement in relation to parenting matters, then they may apply to the Family Court or Federal Magistrates Court, for "*Parenting Orders*". Even when a Court Application is filed, it is possible to reach an agreement and make your own decisions regarding your child/ren at any time prior to the final hearing.

When determining the issue of Parenting Orders, the Court must regard the best interests of the child as the overriding consideration.

An Application may be made to the Court for one or all of the following Orders:

1. Orders that specify the parent(s) with whom the child/ren lives;
2. Orders that specify the parent with whom the child/ren will spend time and how often; and
3. Orders dealing with other aspects of parental responsibility such as the special needs of a child or children, their religion, education and medical treatment;
4. Orders in relation to a child's time with other important people, such as Grandparents.

In some cases the Court may order that a Family Report be prepared. To read more about Family Reports, refer to our factsheet entitled "**Family Reports**".

In determining parenting matters, the Court must apply a presumption that it is in the child/ren's best interests for their parents to have equal shared parenting responsibility for their child/ren. This is not a presumption of equal time, although that too may be appropriate.



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While Parenting Orders are usually applied for by parents, any person concerned with the care, welfare and development of the child/ren including grandparents, step-parents and other persons may also apply for Parenting Orders.

Once Orders are made they are enforceable by the Court and the Court can impose penalties on any person who disobeys the orders.

Parenting Orders can always be reviewed while the child/ren is/are under 18 years of age. However, the Court will not review existing Parenting Orders unless there has been a change in circumstances involving the child.

Section 60CC Family Law Act 1975 - The Factors the Court Considers:

In determining the best interests of a child, the Court considers the primary considerations of the benefit of the child having a meaningful relationship with both of their parents and the need to protect the child from harm, together with the following additional considerations:

- Any views expressed by the child and the child's age and maturity;
- 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;
- The nature of the relationship of the child with each of their parents and with other persons;
- The likely effect of any changes to the child's circumstances, including the likely effect on the child of any separation from parents or any other child or person;
- The practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to have a relationship and direct contact with both parents regularly;
- The capacity of each parent or any other person to provide for the needs of the child, including emotional and intellectual needs;
- The child's maturity, sex and background (including any need to maintain a connection with a lifestyle, culture and tradition of aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the Court deems appropriate;
- The need to protect the child from physical or psychological harm caused or that may be caused by being directly and/or indirectly exposed to abuse, ill-treatment, violence or other behaviour;
- The attitude towards the child and to the responsibilities of parenthood demonstrated by each of the child's parents;
- Any family violence involving the child or a member of the child's family;
- Any Family Violence Order that applies to the child or a member of the child's family.
- Whether it would be preferable to make an Order that would be least likely to lead to further proceedings in relation to the child;
- Any other fact or circumstance that the Court deems appropriate.

Further details with respect to parenting matters may be obtained by contacting one of our Solicitors, who can offer practical legal advice and guidance, ensuring that your children are well looked after.



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