



# Consent orders, parenting orders and parenting plans

*A guide to preparing a written agreement with your ex-partner about arrangements for your children*

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## Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at August 2013 and does not accept responsibility for any errors or omissions.

We are committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you would like this publication explained in your language, please telephone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland. This is a free service.



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# How can this guide help me?

This guide provides information on preparing a written agreement between you and your ex-partner about arrangements for your children. It discusses consent orders, parenting plans and parenting orders. It also explains all the steps you need to take if you choose to ask a court to formalise your agreement.

## When should I use this guide?

Use this guide if:

- you and your ex-partner have children together
- you agree on arrangements for them (for example which parent they live with, how often they see the other parent)
- you want to set out the arrangements in writing
- you don't want to have a court official such as a magistrate decide on the arrangements for your children.

This guide contains all the information you need if you and your ex-partner are willing to agree in writing about the arrangements for your children. You can also use it if you already have court orders and want to change them, providing you both agree to the changes.

If you and your ex-partner don't agree on arrangements for your children, or you agree but one of you does not want to put it in writing and sign it, your next step will be to get help to see if you can reach a written and signed agreement. Your options are listed on pages 4 and 5.

If you have exhausted all avenues and still cannot agree, you can go to court and ask the court to decide on the arrangements for your children.

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# Can I get legal advice?

It is always a good idea to get independent legal advice about the agreement you want to put in writing. A lawyer can explain your rights and responsibilities under the law and make sure you understand the consequences and effects of the agreement you want to make.

If you need help with preparing your written agreement, you can get legal advice from:

- Legal Aid Queensland – call 1300 65 11 88 (for the cost of a local call from a landline in Australia) for free advice or visit [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)
- a community legal centre – visit [www.qaills.org.au](http://www.qaills.org.au) or call 1300 65 11 88 to find services in your area
- a private solicitor – call the Queensland Law Society on (07) 3842 5842 for the names of solicitors who specialise or are accredited in family law.

Even if you have reached agreement with your ex-partner, it is always a good idea to get independent legal advice.



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# Getting help to reach your agreement

When working towards your agreement with your ex-partner, you can discuss the matters without anyone present, or you may benefit from the help of counsellors or mediation services to help you both work through all the relevant points and arrive at an agreement that is in your child/ren's best interests.

For example, even if you currently disagree, you may be able to reach agreement by participating in a dispute resolution conference.

There is excellent information explaining family dispute resolution — what it is, how it works, what it costs etc — at [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

Here is a list of organisations that may be able to help you as you work towards an agreement.

## Legal Aid Queensland

You can get free legal advice from Legal Aid Queensland about preparing your agreement, or to help you decide which counselling or mediation services might be right for you, or whether you are eligible to apply for legal aid to attend a dispute resolution conference run by Legal Aid Queensland.

Visit [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au) or call 1300 65 11 88 (for the cost of a local call from a landline in Australia).

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## Family Relationships Online

Family Relationships Online is a federal government service providing online information, drop-in centres and a free telephone advice line. You can access a wide range of services, including family dispute resolution through this organisation.

Visit [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au) or call the Family Relationship Advice Line on 1800 050 321.

## Relationships Australia

This organisation also offers counselling and family dispute resolution.

Visit [www.relationships.org.au](http://www.relationships.org.au) or call 1300 364 277.



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# Making your written agreement

## What is the difference between consent orders, parenting orders and parenting plans?

### Consent orders

When you and your ex-partner agree about arrangements for your children, you can apply to the court for orders to be made by agreement. These are called consent orders. Consent orders are court orders that set out what both parents must do. They have the same force and effect as if you had gone to court and argued and the court made the decision. If you break a court order you are breaking the law and you can be punished.

Consent orders are usually between the child's parents. In some circumstances, grandparents and other relatives can also make consent orders about children who are related to them. If you are not a parent or relative of a child/ren you will need to get legal advice about the process you have to follow.

### Parenting plans

If you and the other parent agree about parenting matters, you can make a parenting plan rather than apply for consent orders. A parenting plan is a less formal way of agreeing in writing about arrangements for your child/ren. It can be on any sort of paper – there is no set form – and it doesn't get filed in a court. It can be short and simple or very detailed. It can be in plain English without using legal terms, or it can use legal terms – as long as your agreement is clear.

You can work out a parenting plan yourselves, or with the help of a counsellor or a friend. You don't need a lawyer to draw up a parenting plan, but you can still ask a lawyer for advice. A parenting plan is a written document that you can use to

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rely on, instead of a verbal agreement. It can easily be changed (as long as both people agree) without having to go to court.

An agreement can only be a parenting plan if it is made free from any threat, duress or coercion.

A parenting plan is not a court order. If you break a parenting plan you are not breaking the law, but if you make a parenting plan and break it, the other person may take you to court. The court will ask you why you broke the parenting plan and might make orders that you do not like as much as the parenting plan.

Also, even though a parenting plan is not a court order, a parenting plan that is signed after a consent order is made may override the consent order. If the parenting plan is different to the consent order, you cannot rely on the consent order or complain that the consent order has been broken. Do not sign anything until you get advice from a lawyer.

## **Parenting order**

If you and your ex-partner don't agree about arrangements for your child/ren and you apply to the court to decide, you are applying for a parenting order.

A parenting order is an order made by a court about your parental responsibilities and arrangements for your child/ren. If you do not follow a parenting order you may be breaking the law and the courts could give you a penalty.

If you want to apply to the court for a parenting order, or apply to make changes to an existing parenting order, you and your ex-partner must attend family dispute resolution. You must get a certificate from a registered family dispute resolution provider confirming you and your ex-partner attempted a family dispute resolution. There are some exceptions to this requirement, such as cases involving family violence or child abuse.



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## More information

The Family Court of Australia has a factsheet called *Parenting orders – obligations, consequences and who can help*. To get a copy call the Family Court of Australia registry on 1300 352 000 or visit [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

You should read this factsheet to learn more about:

- your legal obligations under an order
- consequences of breaching an order
- options to ensure parents follow a parenting order
- courses, programs and services in the community that can help parents understand their responsibilities and adjust to a parenting order.

If the court approves your consent orders, they will send you a copy of this factsheet and information about who can help with your sealed (stamped) orders. We recommend you read this factsheet before preparing your application.

## What should go into our written agreement?

The Family Law Act encourages parents to talk about and agree on arrangements that are in their child/ren's best interests. On pages 28 to 31 of this guide you will find the parts of the Family Law Act that explain what this means. It includes things like ensuring your child/ren's safety and letting them have meaningful relationships with both parents and other relatives such as grandparents.

Read these parts so you have a good understanding of the principles underlying any agreement you make. If you apply for consent orders, you will have to sign an affidavit saying you have read and considered the sections of the Family Law Act (sections 60B, 60CA, 60CC, 61DA, 64B and 65DAA) that are on pages 26 to 37 of this guide.

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The court must presume it is in the child's best interests for the child's parents to have equal shared parental responsibility, except where there is abuse or family violence.

'Equal shared parental responsibility' means parents share the big decisions about their children. This is different to children spending an equal amount of time with each parent. If the court presumes the parents should have equal shared parental responsibility, it must consider if spending equal time with each parent would be in the children's best interests and is reasonably practical. If so, it must look at making an order for the children to spend 'equal time' with each parent.

When equal time is not appropriate, the court then must consider if an order for substantial and significant time is practical and in the children's best interests. 'Substantial and significant time' means the time a child spends with a parent on weekends, holidays and weekdays. Even if you both agree on the arrangements, the court will still look at your agreement from the point of view of 'the best interests of the child/ren' and will not accept it if it does not reflect this principle. If you want to do something different from 'equal shared parental responsibility', you will have to persuade the court that your agreement is in your child/ren's best interests.

When you read the sections of the Family Law Act on pages 26 to 39 of this guide, you will notice it doesn't talk about 'custody' and 'access' or 'residence' and 'contact'. These are terms previously used in family law. Instead, it now talks about 'making arrangements' for children, including where the children will live and how often the children will see and talk to the other parent (and grandparents and other extended family).

You may already have court orders that say the children 'live' or 'reside with' one parent and 'have contact' with the other parent. Any new orders will talk about the children 'living' with one parent and 'spending time' and 'communicating' with the other parent.

Use this more updated language in your agreement.

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# What should we consider when preparing our written agreement?

You should consider and include these things in your agreement:

- Where will the child/ren live?
- Will there be a shared care arrangement where the child/ren live with each parent for part of the week or fortnight?
- Are there any religious, cultural, educational or other considerations you want to include in your agreement?

Try to think of things that may happen in the future and what arrangements you can make to help with those events. Ask “what if...” questions, for example:

- What if the children are sick?
- What if there is a pupil free day following the weekend the children are spending time with the other parent?
- What if the children want to attend swimming lessons, football, or dancing — Who will pay for it and who will take the children?
- Are there religious ceremonies they should attend? Who will take them?
- What if I want to take them on an overseas holiday?

The agreement you and the other parent reach must be one that is reasonable and practical for your circumstances.

When you are trying to decide what are reasonable and practical arrangements for your child/ren, put yourself in their place and ask how they might cope with the arrangements you propose. Think about the following things:

- How far will they have to travel to school from each parent’s house?
- Will they be able to maintain their friendship groups and activities if they are living in two different households?
- Are they old enough to remember to move the things they might need, such as sports equipment, between the two households as needed?

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Also, think about how you and the other parent will manage things like:

- before and after school care
- school holidays
- transport
- your employment or study obligations
- the financial costs of shared care.

Ask yourself “Is this agreement workable?” and “Is it in the child/ren’s best interests?”.

Consider the arrangements that appear ‘equal’ or ‘fair’ on paper may not be the best arrangements if they are too onerous for the children or for one or both parents.

It is important your agreement is written in a way that is short and clear to not only you and the other parent, but to any other party who may need to refer to it (eg school or day care centres).

For more information, see the consent order examples on page 18.



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# Preparing your application for consent orders

This section tells you how to prepare the documents for the court when you are applying for consent orders.

If you feel unsure about either the steps involved to prepare your application, or any documents you are being asked to sign, you should get legal advice (see page 3 of this guide).

## What documents do I need to prepare my application?

You will need:

- *Application for Consent Orders (do-it-yourself kit)* — this kit includes information to help you complete the forms needed to apply for consent orders.
- *Application for Consent Orders kit – supplement* — this document supplies the four forms you need to compile your consent orders when filing them at the court. The four forms are:
  1. *Document ‘A’* — is a sample cover sheet for the draft consent orders
  2. *Document ‘B’* — is a sample first page for the draft consent orders
  3. *Document ‘C’* — this is where you write the draft consent orders you are seeking based on the agreement you have reached with your ex-partner (see consent order examples on page 18 of this guide). Each order must be in a separate, numbered paragraph.
  4. *Document ‘D’* — is a certification for the consent orders. This is the cover page you will attach to two copies of the draft consent orders to certify they are true and correct copies.

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- *Annexure to Draft Consent Parenting Order* — each person who is making an application for consent orders needs to complete part A and part B this form, sign it at the bottom of page 2 and attach it to the original copy of the proposed orders.

If in Part B, you say that there has been risk of abuse, neglect or family violence to you or a child, or allegations that this has occurred, you will need to complete part C of the *Annexure* to explain to the court how these orders deal with those circumstances. If you are uncertain whether these circumstances apply to you and/or your family, you should get legal advice about completing this form.

- If you are applying to change a parenting order made under the *Family Law Act 1975*, you will need a sealed copy of the existing orders.
- If there is a family violence order or any other order relevant to your case that you will be including as part of your application, then you will also need a copy of that document.

## Where do I get the forms and documents?

The Family Court of Australia registry can provide you with the documents listed above. You can also download these forms from the Family Law Court's website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au). Select '*Forms*' and '*Forms listed alphabetically*' to access these documents. If you have a computer you can save the forms and fill them out electronically. If you prefer, you can get the forms mailed to you by calling 1300 352 000.

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# What do I do when I have all the forms and documents?

You should prepare all the forms before you sign them.

## Step 1. Complete the Application for consent orders

The *Application for Consent Orders* should be typed (you can download an interactive version from the Family Law Court’s website that allows you to type into relevant fields). If you cannot type your answers, write them clearly in blue or black ink.

The person that files the form is called the ‘applicant’, and the other person is called the ‘respondent’.

Parts J and L of the application ask for a ‘Statement of truth’ from the applicant and respondent. Parts K and M of the application are a statement of independent legal advice, which must be signed by each person’s lawyer, if they used one.

This form has a section on consent orders about financial matters other than child maintenance, such as property settlement and spousal maintenance. Ignore the sections about these matters (parts H and I) if they do not apply to you.

If you already have a parenting order that was made in the same court registry, then you should already have a court number that goes on the front of the *Application for Consent Orders*.

## Step 2. Prepare your draft consent orders

Your agreement is called ‘draft consent orders’ when it is presented to the court. Use the forms from the *Application for Consent Orders kit – supplement* mentioned on page 12.

The forms must be typed, not handwritten.

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### **Step 3. Prepare copies of other relevant orders**

If you already have parenting orders you want to change, make a copy of the existing orders.

If you are providing a family violence order in your application, then make a copy of this order.

### **Step 4. Sign all the documents and forms**

Show your ex-partner the forms and documents to check they are willing to sign them. If wording still needs to be changed, then take the time to get it to the point where both people clearly understand the agreement and are willing to sign it.

When everyone agrees on the wording, then each person should sign and date in all the relevant places, which are:

- the ‘Statement of truth’ at part J for the applicant and part L for the respondent
- at the bottom of each page of the ‘Consent orders’
- on the ‘Certification of consent orders’
- at the bottom of page 2 of the *Annexure to Draft Consent Parenting Order*.

Make sure you have crossed all the relevant boxes that apply to your ‘Statement of truth’ before you sign.

Each person must sign the ‘Statement of truth’, the ‘Consent orders’ and the other forms all at once. It does not matter who signs first or if one person signs the documents on a different day, providing they have also signed them all at once.



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## Step 5. File all the documents and forms

Lodging your application with the court is called ‘filing your application’.

The applicant must file the application and draft consent orders within 90 days of the first ‘Statement of truth’ being signed, otherwise the court will not be able to make the consent orders.

You can file the documents by post or in person at the registry. If you file by post and the documents are not correct, the court will return them to you with a letter telling you what you need to do to fix the problem.

To file, you will need:

- the original signed *Application for consent orders* and two copies
- the original signed draft consent orders and two certified copies (using Document ‘D’ from the *Application for Consent Orders kit – supplement*).
- the original *Annexure to Draft Consent Parenting Order*
- an *Application for exemption from fees – financial hardship* (if this applies to you).

The applicant and the respondent should also keep a complete copy of all the forms and documents filed with the court.





## Step 6. Pay the court filing fee

The Family Court of Australia charges a fee to file an application for consent orders.

You can pay the fee by cheque, money order, cash, debit card or credit card.

If you hold a government concession card, are in prison, are under 18 or can prove you're experiencing financial hardship you may be eligible for an exemption from the filing fee. You will need to complete an *Application for exemption from fees – financial hardship* form and provide a copy of your concession card.

For more information on filing fees, you can get a copy of the *Court Fees* brochure from the Family Court of Australia's registry, from the Family Law Courts' website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) or by calling 1300 352 000.

## What happens after filing?

After you file your application for consent orders, a registrar considers it. If the registrar is satisfied the order should be made, they sign the orders and send you sealed (stamped) copies. If the registrar is not satisfied, they will send you a brief notice outlining what you need to do. Your application may need to be heard in court.

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# Consent order examples

Here are some consent order examples which you can adapt to suit your own circumstances. The sample orders cover:

- equal shared parental responsibility
- telephone, email and skype communication
- arrangements for holidays and special occasions
- travel and transport costs
- child/ren's activities
- medical and specific issues.

## Equal time orders

- That unless otherwise agreed between the parents, the children [name] born ... and [name] born ... (“the children”) live with the mother and the father, on a week about basis, starting ... 2013.
- The mother and the father have equal, shared parental responsibility for long-term issues relating to the children.
- When the children are living with the mother and the father in line with paragraph 1, the children shall live with the mother in week 1, from after school Monday to 9am the following Monday and with the father, in week 2 from 9am Monday to after school the following Monday.
- When the children are living with each parent, that parent will be responsible for the day-to-day care and decisions for the children.
- When changeovers do not take place at school, the mother will collect the children from the father at the beginning of week 1 and the father will collect the children from the mother at the beginning of week 2.

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## Telephone/email/skype communication

- The children will communicate with the parent with whom they are not living each Monday/Tuesday/Wednesday/Thursday/Friday/ Saturday/Sunday night/s by landline/mobile/email/skype, and the parent with whom they are living will arrange that communication.
- When the children are living with the mother or the father, the parent who has the children in their care shall facilitate any reasonable request by any of the children to communicate with the other parent.

## Holidays

- Each parent will be able to spend four weeks holiday a year with the children, with no more than a two-week block period at one time, and the parent who wants to spend holiday time with the children will provide the other parent with one month's notice of the holiday period he/she wants to have with the children.

## Special occasions

- On the children's birthdays the parent who does not have the children in their care will spend from after school until ... pm with the children if a school day or for four hours, at time agreed with the other parent/ from ... to ... if a weekend day.
- On Mother's Day/Father's Day, if the children are in the father's/mother's care, they will return to the mother's/father's care at 5pm the Saturday before Mother's/ Father's Day and remain in their care.
- At Christmas, with the mother/father from ... Christmas Eve to ...Christmas Day and with the father/mother from ... Christmas Day to ... Boxing Day.

*OR*

- With the father/mother on Christmas Day in odd/even numbered years and the mother/father on Christmas Eve in even/odd numbered years.

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## Travel or transport costs

- The parents will share equally/ % split the air/train/bus fare for the children to spend time with the mother/father as outlined in order # .

*OR*

- The mother/father will pay the air/train/bus fare for the children to spend time with the mother/father as outlined in order # .

*OR*

- The father/mother will pay for the children's transport costs and will, no later than 14 days before the day he/she is due to spend time with the children, send copies of travel tickets/documents, including details of the departure and return dates, flight/train/bus numbers to the other father/mother. If the transport is not paid for, before the 14 day period ends, the time with the children will be suspended until the tickets are paid for and given to the other parent.

## Children's activities

- The mother and father will ensure the children attend all extra curricular and social activities that occur when the children are in their care including but not limited to ...

## Medical

- The mother and the father are to notify the other as soon as possible of any medical emergency, serious injury or illness involving the children.
- If a child is taking prescribed medication, the parent who buys the child's medication will provide the other parent with the medication and instructions for its use, when the child goes into the other parent's care.

*OR*

- Each parent will ensure they have a supply of the medication (name) taken by ... and will follow the prescribing medical professional's directions for administering the medication to the child.

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- The parents will ensure ... does not consume nuts/eggs/dairy products/gluten when he/she is in their care.
  - Except in the case of an emergency, the parents agree the children will visit the ... Medical Centre/Dr ...

## **Specific issues**

- The parents will communicate about issues concerning the children through a communication book that will travel between the parents with the children. The communication by the parents in the book will always relate only to the children and be polite and respectful.

*OR*

- The parents will communicate about issues concerning the children through a passworded email account, set up and maintained solely for this purpose, and email communication will be polite and respectful.
- Neither parent is to use physical discipline on the children or allow someone else to do so.
- Neither parent will speak badly of the other to the children or where the children can hear, nor allow another person to do so.
- Neither parent will discuss any issues in dispute between the parents to the children or where the children can hear, nor allow another person to do so.
- Each parent will be primarily responsible for caring for the children while in their care.
- Neither parent will question the children about the other parent's household, their family or friends.
- If either parent changes their contact telephone number or address they must notify the other within 24 hours of that change.
- To be given to the children's school/day care and any medical professional treating the children. The school/day care or medical professional is authorised to speak with either parent about the children's health, education, development and welfare.
- The children are not to be left unsupervised in the care of ...

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# Legal words and phrases explained

**Applicant** — the person who asks the court to do something by filing an application (in children’s matters, usually a parent)

**Child** — a person under 18. An unborn child is not considered to be a child for the purpose of the Family Law Act.

**Child’s best interests** — any order involving children must be based on what is in the child’s best interests and may not necessarily be the parents’ wishes. All circumstances affecting the child are taken into account. (See sections 60CA and 60CC of the Family Law Act on pages 28 to 31 of this guide).

**Communicating with** — telephone calls, letters, emails etc — any ‘contact’ that is not face-to-face.

**Consent orders** — when you and the other parent agree about arrangements for your children, you can apply to the court for orders to be made by agreement. These are called consent orders.

**Equal shared parental responsibility** — it is presumed to be in the child’s best interests for parents to have equal shared parental responsibility (except where there is family violence or child abuse). This does not mean ‘shared care’. It means parents share responsibility for making decisions about major long-term issues that affect their children.

**Equal time** — if parents have equal shared parental responsibility, then the court must consider the child spending equal time with each parent, if it is reasonably practicable and in the child’s best interests. This does not apply if there is evidence of family violence or child abuse (see also ‘substantial and significant time’).

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**Family counselling** — a process to help people deal with issues about themselves and their children when parents separate or are arguing.

**Family dispute resolution** — a process to resolve arguments (ie mediation) in family law matters to help people reach agreement about parenting arrangements. A family dispute resolution practitioner helps people to reach agreement in a non-threatening process involving discussion and negotiation.

**Family dispute resolution practitioner** — a person with professional training and approved by law, who provides dispute resolution services (mediation) to people who disagree about parenting arrangements and other family law issues.

**Family relationship centre** — centres set up and paid for by the government that provide counselling and dispute resolution services for people who don't agree about relationship issues and parenting arrangements. Family relationship centres offer information and advice to families at all stages of their life, including people starting relationships, those wanting to make their relationships stronger, those having relationship difficulties and those affected when families separate.

**Family violence** — behaviour, either actual or threatened, towards a family member or their property that makes anyone in the family feel unsafe (although the fear or apprehension must be reasonable). Violence covers a broad range of controlling behaviours and includes physical, verbal, emotional, psychological, sexual, financial or social abuse. Examples include cutting off a person from seeing friends and relatives or controlling the person's access to money. As well as affecting a person's safety, it may mean a person cannot properly negotiate or participate in court matters.

**Family violence order** — an order for a set period of time (including a temporary or interim order) made under a state or territory law to protect a person from family violence.

**Hearing** — where evidence is considered from all people involved in the matter and a judgment is made.



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**Live with** — where and with whom the child lives. A child may live at more than one place, or may live with more than one parent. For example, a child may live with one parent for half of the week and the other parent for the other half. This used to be called ‘residence’ or ‘custody’.

**Major long-term issues** — issues that affect the child’s long-term care, welfare and development, including the child’s education, religious and cultural upbringing, health, name and changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with a parent. A parent deciding to have a relationship with a new partner is not a major long-term issue in itself, but if this decision means relocating and significantly affecting time spent with the other parent, this is a major long-term issue.

**Mediation** — a way to settle arguments without going to court that involves an independent person helping parents or other carers to reach agreement (see ‘family dispute resolution’).

**Order** — an order is made by a court. It requires a person to do something. Orders may be final or interim (temporary until a further order is made).

**Parent** — a person who is legally the parent of a child either biologically, by adoption, by means of artificial conception procedures or by order of a court. In some cases the kinship obligations of Aboriginal and Torres Strait Islander culture are considered.

**Parenting orders** — court orders setting out arrangements for children. Orders as to who the children will live with are usually made in favour of parents, but are available to other people significant in a child’s life, such as grandparents (see ‘consent orders’).

**Parenting plan** — a parenting plan is a voluntary written agreement, signed and dated by the people involved that deals with at least one sort of arrangement for the children.

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**Reasonably practical** — before making the parenting order, the court must consider if the order about ‘equal time’ or ‘substantial and significant time’ is reasonably practical. Some matters the court must take into account are how far apart the parents live, the impact of the arrangements on the child and how the parents communicate with each other and the child.

**Relative** — a person directly related to the child, for example siblings, grandparents, aunts or uncles. In some cases the kinship obligations of Aboriginal and Torres Strait Islander culture are considered.

**Respondent** — a person against whom an application is brought to the court (in children’s matters, usually the other parent).

**Sealed orders** — orders that have been approved by the court and have the court stamp (seal) on them, making them official court documents.

**Spending time with** — the time the child spends with the parent (or grandparents or other relatives) they don’t live with. This used to be called ‘contact’ or ‘access’.

**Substantial and significant time** — the amount of time a child spends with a parent they do not live with. It includes time spent during the day and overnight, weekends, time during the week, holidays, special occasions (eg birthdays, weddings). It also includes time allowing a parent to be involved in the child’s daily routine.

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# ***Family Law Act 1975 — relevant sections***

## **The Family Law Act**

- Section 60B
- Section 60CA
- Section 60CC
- Section 61DA
- Section 64B
- Section 65DAA
- Section 63C

The following pages are copies of the sections of the Family Law Act listed above. The first six are the sections you and the other person need to read and consider before you can truthfully swear your affidavit for consent orders. The last section is about parenting plans.

## ***Family Law Act 1975 — Section 60B***

### **Objects of Part and principles underlying it**

- (1) The objects of this Part are to ensure that the best interests of children are met by:
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
  - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

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- (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):
- (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
  - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
  - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children; and
  - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child's or 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.

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## **Family Law Act 1975 — Section 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.

## **Family Law Act 1975 — Section 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.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

(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).

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### *Additional considerations*

(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;

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- (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 applies, 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*

- (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).

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*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.

## **Family Law Act 1975 – Section 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.



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- (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.

## ***Family Law Act 1975 – Section 64B***

### **Meaning of parenting order and related terms**

- (1) A parenting order is:
  - (a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or
  - (b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).
- (2) A parenting order may deal with one or more of the following:
  - (a) the person or persons with whom a child is to live;
  - (b) the time a child is to spend with another person or other persons;
  - (c) the allocation of parental responsibility for a child;
  - (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
  - (e) the communication a child is to have with another person or other persons;
  - (f) maintenance of a child;
  - (g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of:
    - (i) a child to whom the order relates; or
    - (ii) the parties to the proceedings in which the order is made;

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- (h) the process to be used for resolving disputes about the terms or operation of the order;
  - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

The person referred to in this subsection may be, or the persons referred to in this subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).

Note: Paragraph (f)—a parenting order cannot deal with the maintenance of a child if the *Child Support (Assessment) Act 1989* applies.

- (3) Without limiting paragraph (2)(c), the order may deal with the allocation of responsibility for making decisions about major long term issues in relation to the child.
- (4) The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:
  - (a) letter; and
  - (b) telephone, email or any other electronic means.
- (4A) Without limiting paragraphs (2)(g) and (h), the parenting order may provide that the parties to the proceedings must consult with a family dispute resolution practitioner to assist with:
  - (a) resolving any dispute about the terms or operation of the order; or
  - (b) reaching agreement about changes to be made to the order.
- (5) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(f), the order is a child maintenance order.
- (6) For the purposes of this Act:
  - (a) a parenting order that provides that a child is to live with a person is made in favour of that person; and

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- (b) a parenting order that provides that a child is to spend time with a person is made in favour of that person; and
  - (c) a parenting order that provides that a child is to have communication with a person is made in favour of that person; and
  - (d) a parenting order that:
    - (i) allocates parental responsibility for a child to a person; or
    - (ii) provides that a person is to share parental responsibility for a child with another person; is made in favour of that person.

(9) In this section:

“this Act” includes:

- (a) the standard Rules of Court; and
- (b) the related Federal Circuit Court Rules.

## ***Family Law Act 1975 — Section 65DAA***

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

*Equal time*

- (1) 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.

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

*Substantial and significant time*

(2) 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;

the 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

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- (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:

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- (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.

## ***Family Law Act 1975 — Section 63C***

### **Meaning of parenting plan and related terms**

- (1) A parenting plan is an agreement that:
  - (a) is in writing; and
  - (b) is or was made between the parents of a child; and
  - (ba) is signed by the parents of the child; and
  - (bb) is dated; and
  - (c) deals with a matter or matters mentioned in subsection (2).
- (1A) An agreement is not a parenting plan for the purposes of this Act unless it is made free from any threat, duress or coercion.
- (2) A parenting plan may deal with one or more of the following:
  - (a) the person or persons with whom a child is to live;
  - (b) the time a child is to spend with another person or other persons;
  - (c) the allocation of parental responsibility for a child;
  - (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
  - (e) the communication a child is to have with another person or other persons;
  - (f) maintenance of a child;

- 
- (g) the process to be used for resolving disputes about the terms or operation of the plan;
  - (h) the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
  - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

Note: Paragraph (f)—if the *Child Support (Assessment) Act 1989* applies, provisions in a parenting plan dealing with the maintenance of a child (as distinct from child support under that Act) are unenforceable and of no effect unless the provisions in the plan are a child support agreement (see section 63CAA and subsection 63G(5) of this Act).

- (2A) The person referred to in subsection (2) may be, or the persons referred to in that subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).
- (2B) Without limiting paragraph (2)(c), the plan may deal with the allocation of responsibility for making decisions about major long term issues in relation to the child.
- (2C) The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:
  - (a) letter; and
  - (b) telephone, email or any other electronic means.
- (3) An agreement may be a parenting plan:
  - (a) whether made before or after the commencement of this section; and
  - (b) whether made inside or outside Australia; and
  - (c) whether other persons as well as a child's parents are also parties; and
  - (d) whether it deals with other matters as well as matters mentioned in subsection (2).

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Note: One of the other matters with which a parenting plan may deal is child support (see section 63CAA).

- (4) Provisions of a parenting plan that deal with matters other than the maintenance of a child are child welfare provisions.
- (5) Provisions of a parenting plan that deal with the matter mentioned in paragraph (2)(f) are child maintenance provisions.
- (6) A registered parenting plan is a parenting plan:
  - (a) that was registered in a court under section 63E as in force at any time before the commencement of the *Family Law Amendment Act 2003*; and
  - (b) that continued to be registered immediately before the commencement of the *Family Law Amendment Act 2003*.



# Your local Legal Aid Queensland office

## **BRISBANE**

44 Herschel Street  
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2<sup>nd</sup> Floor  
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Ground Floor  
Kingsgate  
42 King Street  
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3rd Floor  
Northtown  
280 Flinders Street  
TOWNSVILLE Q 4810

## **WOODRIDGE**

1<sup>st</sup> Floor  
Woodridge Place  
Cnr Ewing Road & Carmody St  
WOODRIDGE Q 4114

1300 65 11 88

[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

