

Legal Aid ACT



PARENTING ARRANGEMENTS AFTER SEPARATION

THE FAMILY LAW ACT 1975 (CTH)

Both de facto (same sex and heterosexual) and married couples' relationships are governed by the Family Law Act.

Separation occurs when one party communicates to the other party that they believe the relationship is over. In Australia the law is not concerned with whose "fault" it is that the relationships broke down. The main concern is what is best for the children.

Children have a right to a relationship with each parent and other important people in their lives, provided that there is a benefit to them and they are protected from harm.

A will is a written legal document which sets out the way you want your property to be distributed when you die. It is the only way of making sure that your wishes are clearly communicated and can be acted upon.

ATTENDING MEDIATION

You can make arrangements for children without being divorced. You do not have to make any formal arrangements if you are both in agreement.

The first step in settling disagreements about who the children live with is attending mediation. Mediation enables you to reach an agreement while avoiding the cost and stress of a court process.

Mediation (or a certificate to say mediation is not appropriate) is required before commencing court proceedings, unless it is urgent.

If mediation fails, a family dispute resolution practitioner can issue you a Section 60I Certificate that allows you to commence court proceedings.



There are several services that can help with mediation including:

- *Family Relationships Centre*
(02) 6122 7190
- *Relationships Australia*
(02) 6122 7100
- *Conflict Resolution Centre*
(02) 6162 4050

Legal Aid ACT can provide lawyer assisted mediation if one of you is eligible for a grant of legal aid.

IF YOU CAN AGREE ON ARRANGEMENTS AT MEDIATION

Parenting Plans

At mediation, the parties may be able to enter into agreements about the arrangements for their children, known as parenting plans. A parenting plan is an agreement in writing that is signed and dated but it is not legally binding. However, the Court must refer to the parenting plan to infer the intentions of the parties if there are later court proceedings.

Consent Orders

While you may not need formal Court Orders for children's matters, you can apply to the Court for orders by agreement. These are known as Consent Orders. Once the Court accepts the agreement, it has the same status as if the Court decided the matter and issued Orders. There is a do-it-yourself Consent Orders kit available on www.familylawcourts.gov.au.

IF YOU CAN'T AGREE ON ARRANGEMENTS AT MEDIATION

Parenting Orders

If you are unable to make arrangements by agreement, you can have Orders made by the Court. The Court will make the Orders it determines best for the children after considering the evidence and the law about children.



COMMONLY ASKED QUESTIONS

Q. Can children make their own decisions about who they want to live with?

The Court will consider the child's views, but the importance placed on those views will depend on each child's maturity and level of understanding of the situation. The Court finds out the children's views usually from a psychologist or a psychiatrist, not directly from the children.

Q. Can a grandparent apply to the Court for an Order to spend time with the children?

Yes, they can but usually this will happen when their adult child is not spending time with the children. It can happen when there is a breakdown of the relationship between the grandparents and the parent and the grandparent is an important person in the child's life.

Q. How do I change my child's surname?

Applications to change a child's surname must be made by both parents to ACT Births, Deaths and Marriages of the Office of Regulatory Services. Either parent can apply to the Court for an Order seeking permission to change the name if the other parent will not give consent.

Q. What if the other parent breaches the Orders?

You must try to resolve the conflict through mediation, or if that fails, you can make an application to the Court alleging that the other parent has contravened the Parenting Order. There are serious consequences for breaching a Court Order without reasonable excuse. **Seek legal advice immediately.**

Q. Can I move out of the region with my children without the other parent's permission?

The answer is almost always "No". Even if there are no Court Orders in place, relocating in a way that makes it harder for the children to see the other parent requires the parent's consent or an Order from the Court.

The other parent can apply to the Court for the child to be returned by you. Sometimes the Court will issue a recovery order which allows the police to find and return your children. **Seek legal advice.**



HOW LEGAL AID ACT CAN ASSIST

Please see our pamphlets on *Applying for Legal Assistance* and *Information about Our Family Practice*.

This pamphlet only provides basic information on family law. You should seek legal advice about what do to in relation to any of these matters.

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