

Parenting After Separation: Information Sheet

Separation can be a stressful time for a child with many factors affecting how they react to such change. Understanding your role as a parent and considering what is best for your child is important. The *Family Law Act 1975* (“FLA”) is the legislation in Australia for resolving parenting arrangements following a relationship breakdown. This Information Sheet summarises the fundamental legal considerations when it comes to the care of children under the FLA.

Best Interests of the Child

The central principle of the FLA is that the best interests of the child must be the most important consideration in any parenting decision. This includes:

- **The Child’s Safety:** Protection from harm, abuse, and neglect.
- **Emotional and Psychological Wellbeing:** Ensuring the child’s emotional and psychological needs are met.
- **Relationship with Parents:** Preserving the child’s meaningful relationship with both parents, provided it is safe to do so.
- **Development and Growth:** Supporting the child’s development, education and overall wellbeing.

The changes to the FLA on 6 May 2024 put much more emphasis on safety of children and respecting their voice. There are no more presumptions about which parent the children should be with, for what period of time and who should be making decisions.

How do we decide what is best for our children?

In an ideal world, children would be living with both parents. If they cannot, the FLA encourages parents to work out together what is best. Things to consider are:

- Thinking about the ages of the children, how can they best spend time with both parents so their relationship with the parents thrives.
- Now we are separated, what home can I provide for the children?
- When am I able to be with the children, especially if I have to work?
- Do I need to pay or to receive Child Support so we can feed and house the children so they get the best possible life?
- Am I able to talk to the other parent and make joint decisions so our children know we are together in a parenting relationship for them, even if our personal relationship is over?
- If I have a new personal relationship, how will that impact the children?

What is parental responsibility?

Parents have to make decisions for their children all the time. Sometimes they are decisions about what to have for dinner and when to go to bed. Other decisions are more important to the child's overriding best interests. The role of making these decisions is called **parental responsibility**. The sorts of decisions include:

- Where the children go to school.
- What medical treatment the children should have.
- Religious issues.

There is no longer an assumption that parents will make decisions together. Parents can agree to make decisions together and are encouraged to do so, provided it is safe and respectful.

Should we have a written agreement?

So that there are no misunderstandings, it is good to have the arrangements written down and signed by both parents. This can also be very helpful in case anything goes wrong. There are 2 main ways of having a written agreement:

1. **Parenting Plan** – this is a signed written agreement that is **not** enforced by the Law. It is evidence however of the agreement you have made as parents. It can include what your ideals are as a parent for your children as well as the basic arrangements for the children being with both parents. They can be reviewed and changed at any time and are used a lot for arrangements before the children are at full time school.
2. **Consent Orders** – these are orders that you have asked the Court to make once you have both agreed to arrangements for the children. They are a more formal document and **are** enforced by the law. They only set out the arrangements for the children being with both parties and who makes important decisions for the children. They cannot be changed unless there is a significant change in the circumstances of the children or parents and/or, in all the circumstances, it is in the children's best interests that they are changed.

What if there has been family violence?

There is a lot of evidence that family violence affects the development of children in negative ways. Violence includes:

- Physical abuse and neglect of children
- Sexual abuse of children
- Emotional abuse of children like telling them they are useless, they are wrong, body shaming, isolating them from friends, school or family etc

- Allowing children to witness or be present while violence and abuse is carried out on another person such as the other parent or family member
- Allowing children to witness or be present when violence is carried out on an animal

What effect does family violence have on the children's time with a parent?

Given the experience of family violence including witnessing family violence is very harmful for a child's development, the new laws place more emphasis on safety. This means that there is no longer an assumption that the children should be with a parent, just because they are a parent.

So that the child can be protected from family violence, matters to be considered include:

- Will the family violence perpetrating parent be violent or abusive to the child when the other parent or another supervising adult is not there?
- Can the parents communicate respectfully?
- Can the parents maintain changeover respectfully or does it need to be supervised or in a Contact Centre?
- Does the parent need to have someone who is trusted with them to make sure they are not violent, abusive or neglectful of the child when they are with them?
- What can the violent parent do to make the way they interact with the child safe (eg learn about anger management and so on)?
- Should the parents have to make decisions jointly for the child or just the parent with whom they are living most of the time?

What happens when we don't agree about arrangements for the children?

- Mediation** – the first thing to do is to attend mediation. This is a chance to talk with the other parent about the arrangements for the children in a safe place with a mediator. It is the mediator's job to keep everyone safe, to make sure everyone is heard and to be an umpire if there is any dispute. It is not the mediator's job to be a judge, just a person who helps people come to their own decisions about their children. If an agreement is made, then the mediator can help you draw a Parenting Plan.
- See a lawyer** – lawyers can help you to understand what the law says about your children. They have experience in what are some of the arrangements parents have made successfully so the children can be with each parent as much as possible, given the children are safe. Your lawyer can negotiate with the other parent and/or their lawyer to reach agreements.
- Court - Ask a Judge to decide** – when parents cannot agree through negotiation or mediation, someone else has to decide what is best for the children. This person is a Judge, or Senior Judicial Registrar of the *Federal Circuit and Family Court of Australia*. A decision is made after hearing evidence from and about the parents, about the children and often from child experts. This process often takes a long time and unless you are

eligible for grants from *Tasmania Legal Aid*, can be very expensive. Each person generally has to pay their own legal costs (there are some exceptions).

Do the children get a say?

The amendments to the *Family Law Act 1975* made on 6 May 2024 places more emphasis on what the children say. How much impact on the situation the children's words have depends on:

- The age of the child.
- The maturity of the child.
- What the child's level of understanding of the situation is.
- Whether the child is being influenced by people or factors relevant to the case in such a way so that their views are not in their best interests (eg a 6 year old wants to be with a parent mainly because they allow them to stay up until midnight playing video games).

If the case is in Court, then the child will have spoken to a Court Child Consultant at an early stage. The child may also have had a lawyer, known as an Independent Children's Lawyer (ICL) appointed by the Court for them. That lawyer must meet with the child and depending on their age, talk with them. They must also take advice from child experts, including the Court Child Consultant, about the child so that they can advise the parents, and if necessary, the Court on what their view is of the child's best interests in all the circumstances.

What happens if a parent doesn't follow the court orders?

Court orders are made for a reason and the Court expects people to follow them. If they don't, a **Contravention Application** can be made.

This is a special Application because it sets out each allegation of contravention specifying what happened, when and how and how it relates to the current Orders (e.g. on 6 May 2024 at 4.00pm in accordance with the orders of 6 May 2023 I went to the Devonport Bluff to collect my child and his mother/father did not arrive with the child). The Respondent has to "plead" to each allegation. They say they are guilty, not guilty or there is a reasonable excuse for what they have done in contravening the Orders.

If the Court agrees with the Application, then the orders it makes can include one or more of the following:

- A monetary fine to the parent who contravened the orders;
- A bond or undertaking from the person who contravened the orders;
- New orders – if the Court takes the view that the current ones are unworkable in all the circumstances; and/or
- The legal costs incurred by the Applicant parent in bringing the Contravention Application to be paid by the Respondent parent.

What happens if the other parent “kidnaps” my child?

You should go to a lawyer as soon as possible. That lawyer will write to the other parent asking for the child to be returned at a set time, day and place.

If the child is not returned, you will have to make a **Recovery Application**. You will have to show evidence that the child could be in danger, that it is in their best interests to be returned to you and/or you already have an agreement, Parenting Plan or Court Orders which say the child should be with you at that time or hasn't been returned by the other parent (the Respondent) as agreed.

If you don't know where that parent has gone, your lawyer will ask for orders which help in finding the child (**location orders**) or ask that someone else. For example, the Respondent's parents be handed the Court Application which they can then hand to the Respondent.

Other Helpful Resources

- *Federal Circuit & Family Court of Australia*
www.fcfcoa.gov.au/fl/children/overview
- *North West Community Legal Centre Inc.*
www.nwclc.org.au
- *Tasmania Legal Aid*
www.legalaid.tas.gov.au/fact-sheets/?families-children-relationships
- *Relationships Australia*
www.tas.relationships.org.au
- *Catholic Care*
www.catholiccaretas.org.au

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