

# Documenting parenting arrangements

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If the care arrangements for your children have been agreed between you and your former spouse after separation, there are different options available for how you can document those arrangements (if at all). There are advantages and disadvantages for each option and what is best for you will be determined by your circumstances in both the short and long term. You should obtain legal advice to discuss these advantages and disadvantages. There are a number of factors which will have an impact on what decision you make, such as:

1. the age of your children; and
2. the nature of your relationship with your former spouse.

There are three generally accepted options for documenting your parenting arrangements.

## Informal arrangement - no documentation

The care arrangements for your children can be agreed upon by sitting down with your former spouse and discussing how the arrangements will occur. If there is no formal documentation then the *Family Law Act 1975* (Cth) says that it is presumed that each parent has parental responsibility for your children.

### Advantages:

1. this option allows for a considerable amount of flexibility between separated parents; and
2. there is always the option to fall back on a more formal process if your circumstances change and you can no longer reach an informal agreement with your former partner.

### Disadvantages:

1. as there are no formal arrangements in place there is no recourse to enforce the agreement if one party resiles from the agreement; and
2. this arrangement works well where there is a high level of trust between you and your former partner. However, that trust can break down following separation which may call for more formalised arrangements.

## Parenting plan

A parenting plan is a formal, written agreement between you and your former partner. A parenting plan sets out in writing the care arrangements that you have agreed upon and is signed and dated by you and your former partner. A parenting plan can be as rigid or flexible as you and your former partner wish.

The parenting plan is a versatile half way house between no formal documentation and a court order and is often used by parties where a level of structure in the arrangements is required but without the rigidity and inflexibility of a court order.

### Advantages:

1. the parenting plan is an agreement with both parties' consent, rather than being decided by a

third party like in a contested court hearing;

2. it allows for flexibility as you and your former partner can agree to change the parenting plan at any time;
3. the parenting plan provides a structure and something you and your former partner can fall back on if there is a disagreement as to the care arrangements;
4. the court, although not enforcing the parenting plan, can take the parenting plan into account if your matter comes before the court at a later time; and
5. there is still the option to apply for a court order if your circumstances change and you can no longer reach an informal agreement with your former partner.

### **Disadvantages**

1. a parenting plan is not a court order, so if you or your former partner break the agreement it cannot be strictly enforced as though it is an order. It is a factor only for the court to consider when if they are called on to decide your matter; and
2. as with the informal arrangement it relies on a certain level of trust between you and your former partner.

### **Court order**

The court can make an order in relation to the care arrangements for your children following an application to the Family Court of Australia or the Federal Circuit Court of Australia. There are two types of orders:

1. consent orders, where you and your former partner come to an agreement as to the care arrangements for your children and ask for this to be formalised by the court; and
2. orders not made by consent, where you and your former partner disagree as to the care arrangements and ask the court to decide on what the court

considers the care arrangements for the children should be. These orders are made after a contested hearing.

### **Advantages:**

1. the care arrangements are binding on you and your former partner and have the full force of the court behind them, and you may seek to enforce the order; and
2. there is a clear, rigid structure in place for the care arrangements which can be essential if there are low levels of trust following separation or where, for example, there has been a history of domestic violence in the relationship.

### **Disadvantages:**

1. if the order is contested it can be a costly and time consuming exercise that can be very emotionally draining;
2. the rigidity of the order means that it is difficult to accommodate changes in your circumstances or changes in your children's circumstances. A court order which is appropriate for a child who is six months old, may quickly become outdated and inappropriate, taking into account a child's developmental needs; and
3. it is next to impossible to try to account for every eventuality when drafting a court order and changing the arrangements requires you to file another application which as above can take a long time and be costly. Further, court orders will only be varied by the court when there has been a change in circumstances for the child.

Ultimately, how you document your care arrangements for your children will be determined by your personal circumstances and what is in the best interests of your children and your relationship with your former partner.

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