

CONSENT ORDERS OR PARENTING PLAN?

Following a separation, it is always best to formalise agreements about the parenting arrangements for the children going forward, to avoid the chance of disputes arising.

There are several ways parties can reach an agreement about parenting arrangements. The two most prominent and well know ways parties usually set up parenting arrangements are Parenting Plans and Consent Orders. Whilst both options set out in details how children will be parented in the future, there are significant differences between them.

Parenting Plans

A Parenting Plan is a written document, a mutual agreement between the parties, which is signed and dated by the parties and sets out all kinds of matters relating to the future care and living arrangements for children, and how parents will be make decisions about their care.

A Parenting Plan will often include agreements about such things as:

- How the parents are to communicate and make long term decisions about the child e.g. education and major medical decisions;
- Who the child lives with and where;
- When and how the child spends time with and communicates with the other parent or other significant people eg grandparents;
- Any agreements about specific issues e.g extracurricular activities
- How information about the children will be shared between the parents and how they will communicate with each other about the children;
- How the parents will resolve any disputes regarding the plan; and
- When the plan should be reviewed.

Parenting plans can be varied at any time by the parties by making another plan or another written agreement to change a part of parts of the agreement.

A parenting plan can give parties the flexibility they may need to change their child/ren's care arrangements as the child/ren grows or their circumstances change.

A Parenting Plan is not legally enforceable. However, it can be used as evidence in court about what care arrangement had been agree to by the parties, should the parties later engage in court proceedings.

Consent Orders

Consent Orders are a written agreement that usually covers the same parenting matters as a parenting plan. However, Consent Orders are legally binding on the parties and can be breached.

Consent Orders can be obtained through making an application to the Court with a draft Order, usually without the need for the parties attend at Court in person – *Consider our Factsheet – Applying for Consent Orders.*

Consent Orders are carefully drafted as they must comply with legislative requirements to make them binding on the parties. As such, even if the parties agree on the Orders they wish the Court to make, the Court will only make the Order if it considers based on the information provided in the application that the Order is in the *best interests of the child/ren*, which is the paramount consideration of any Judge when considering or making orders in relation to the care and future living arrangements of a child.

Orders cannot be changed as easily as a Parenting Plan. If you wish to change a Parenting Order, you must either:

- a) apply to the Court to have the Orders varied by filing another Application for Consent Orders and Minutes of Orders or by initiating court proceedings;
- b) make a Parenting Plan to change the Orders provided this is done in writing and both parties enter that Parenting Plan free of any coercion or pressure by the other party to do so.

If a party does not comply with the Orders, the other party can make an application to the Court for a Contravention of the Orders, and there can be serious consequences for the party in breach of the Orders.

What should I do – Parenting Plan or Consent Orders?

Deciding whether you should have a Parenting Plan or a Consent Order will depend on your own circumstances. You should think about how easily you and the other party communicate and the level of your present dispute.

If you are not sure that the other party will stick to their agreement, or if they have previously threatened to withhold the child from you, then a Consent Order would be the preferred option. If, however you are both able to communicate well and you think you are able to resolve future parenting issues between you without dispute, then a parenting plan might suit your better. .

Please do not hesitate to contact us on (07) 3172 3474 or (07) 4659 9958 or reception@redhilllegal.com.au if you need assistance.