

InfoSheet:

Your children after separation

There will be a number of issues that relate to your children after your separation. These will include where the children will live on a day-to-day basis, and the arrangements for the children to visit their other parent or other significant people in their lives, such as grandparents and relatives.

Our service commitment

We take a personal interest in you and want to help take the stress out of one of life's most challenging times. We are here to help you, give you guidance and professional advice. We will take the time to listen to you.

Our commitment to you is that we will:

- outline how long we expect it to take
- regularly update you on how your matter is progressing
- give you a clear indication of the costs before starting work for you
- provide flexible payment options
- give you access to our Accredited Specialist in Family Law

The first steps

For a discounted fee of \$250 you can consult with one of our specialist lawyers who will provide you with advice in relation to your specific issues and point you in the right direction for the best outcome for you and your family

alternatively

You can consult with one of our specialist lawyers at our Free Family Law Clinic held monthly at our Dapto or Shellharbour offices. This appointment is restricted to 30 minutes and provides a summary of the family law process.

Specific issues

Separated parents still have a responsibility for the long-term care, welfare and development of their children. Shared parental responsibility is normally ordered by the court but there may be times when this is not appropriate.

Shared parental responsibility means that both parents are responsible for the long term decisions affecting the children including their education, religious upbringing, use of surname, whether a child may go to live overseas or interstate and major health decisions.

Your options

We can help you to:

- make your own decisions by agreement
- negotiate a settlement
- seek a court decision
- arrange counselling or mediation

How can we help?

If you and the other parent are able to reach your own decisions about issues relating to your children, your agreement can be put in writing and filed with the court. These agreements will be made into a court order that is binding on both parties.

We recommended that you formalise your agreement in this way to avoid, as much as possible, any difficulties in the future.

Shared care

There is now a legal presumption that it is in a child's best interest to spend time on a regular basis with, and communicate on a regular basis with, both their parents. This extends to the child, where reasonably practicable, spending equal time with each parent. If this is not reasonably practicable the child should still spend significant and/or substantial time with either parent.

We can help in providing possible solutions and by negotiating a settlement by court order. We will assist in advising you on settlement agreements that can be formalised by court orders.

If you and the other parent are unable to reach agreement, then it may be necessary for an application to be made to the court to resolve matters. We will prepare all the documents which are necessary.

Things to consider

There are no hard-and-fast rules about who children live and spend time with. Each case is treated individually by the court, and by us. Whether you are reaching your own decision or seeking a decision by the Court, there are some relevant matters.

The wishes of the children

The express wishes of the children as to who they live and spend time with are not the only matter to be considered, nor are they necessarily conclusive or final. There is no magic age at which children can decide with whom they want to live with or visit. The court may place less reliance or weight on the wishes of a young child as compared with the wishes of a teenager.

The primary carer

The parent who has been primarily responsible during the relationship for the day-to-day care of the children is seen as the primary carer. This includes factors such as who has been the

parent doing tasks associated with the care of children including bathing, feeding, supervising, or whether this role has been or will be shared by the parents.

Effect of separation on children

This includes separation from either of their parents or persons such as a step-parent, grandparent, brother or sister.

Change to existing arrangements

This includes where children have been living, the school children have been attending, friends in the neighbourhood, etc.

Parenting capacity

The court will consider each parent's capacity to provide for the physical, emotional and intellectual needs of the children.

Abuse and Family Violence

There is a recognised need to protect children from physical, sexual or emotional abuse and/or violence. There are other matters relevant and may be special to your particular family. These should be discussed with us.

Independent Children's Lawyer

In some matters, it is necessary for children to have their own solicitor. This solicitor is called an "Independent Children's Lawyer" and their role is to ensure that the children's needs and wishes are independently put to the court. On other occasions, a parent may seek an order from the court that the children are separately represented, although it is still up to the judge to decide if separate representation is appropriate.

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Spending time with the Children.

The law recognises the benefit to the child of having a meaningful relationship with both of the child's parents.

Generally, it is said that children benefit from continued time with both parents. In some cases there are some very good reasons why a child should not see one parent. If you think this is appropriate in your situation, then you should discuss this with us.

A very good reason for a child not spending time with a parent would be if the child is at risk of being abused (physically or sexually). In some families supervised visits may be appropriate.

Options

We can help you with the following options:

- Consent orders
- Court decision
- Collaborative law

Compulsory Family Dispute Resolution

The Family Law Act requires that you attend Compulsory Family Dispute Resolution before you commence Court proceedings.

Court proceedings can not be commenced until you have received a section 60I certificate from a registered family dispute resolution practitioner.

Some exceptions apply to having to attend Compulsory Family Dispute Resolution and obtain a section 60I certificate which include if the court is satisfied that:

- There are reasonable grounds to believe that there has been abuse, or there is risk of abuse, of a child by one of the parties to the proceedings.
- There has been family violence, or there is a risk of family violence, by one of the parties to the proceedings.
- The application is made in circumstances of urgency.

- One or more of the parties to the proceedings is unable to participate effectively in family dispute resolution.

If your matter involves any form of child abuse or family violence you should contact us immediately so we can advise you of your rights and available options.

There are counselling/mediation facilities available through government agencies and through other agencies. If you think counselling may help you and the other parent come to an agreement about the arrangements for your children, then we can help arrange for a counselling/mediation session. We will discuss this with you further in a meeting.

If your case proceeds to court, arrangements are automatically made for you and your former partner to attend a dispute resolution session.

Changes to existing orders

Parents can agree to a variation of previous orders or arrangements. Changes by agreement should be formalised by way of written variation and that agreement should also be filed with the Court. We can also help you with this.

Other ways we can help

- abduction of children
- non-compliance with court orders
- changing the children's name
- establishing parentage
- arranging for interpreters
- adult child maintenance

