

CHILDREN

When parents separate, new arrangements are needed for the children. Parents can reach agreement themselves but you should get legal advice before doing so, especially if there has been family violence or you have safety concerns. It does not matter what type of relationship you were in with the other parent, the same rules apply to issues affecting children.

Can I get help to reach agreement about the children?

Parents can use **Family Dispute Resolution (FDR)** to help resolve these issues. They must attempt FDR before starting court proceedings. FDR is not suitable for all cases. There are important exceptions. Where agreement is reached, parents may wish to enter into a Parenting Plan or Consent Orders. See the WLS infosheet on 'reaching agreement' for more information about FDR and the options for finalising agreements.

What if an agreement can't be reached?

Sometimes the best option might be to do nothing. If you are considering this get legal advice.

Alternatively parents can make an application to the court for Parenting Orders. **Parenting Orders** cover such things as: which parent the child lives with and how much time the child spends with, and communicates with, the other parent.

What is considered in parenting cases?

When making decisions about a child, the main concern of the court is the **best interests of the child**. In deciding this, the primary issues for consideration are:

1. Whether the child will benefit from having a meaningful relationship with both parents; and
2. The need to protect a child from physical or psychological harm from being subject or exposed to abuse, neglect or violence.

When weighing up these two factors **greater weight** is required to be given to **the protection of a child**.

Additional factors a court must then consider include:

- The views of the child (the child's age and maturity are important factors)
- The child's relationship with each parent and other significant people
- Whether each parent has fulfilled their parenting responsibilities (how well and how much)
- Whether parents have participated in spending time or communicating with the child
- Whether parents are financially supporting the child including paying child support
- The likely effect on the child of any change in circumstances
- Practical issues of distance and expense of any proposed arrangements
- How well each parent is able to look after the child and meet their needs
- The maturity, sex, lifestyle and background (including cultural background) of the child and their family
- Whether the child identifies as an Aboriginal and Torres Strait Islander and the likely impact of an order on their right to enjoy their culture
- Parental attitudes to parenting and responsibilities
- Whether there has been any family violence or family violence orders made
- Whether it is best to make an order that is the least likely to lead to more court proceedings, and
- Any other relevant factors

Parental responsibility

Under the law, parents do not have 'rights' to their children. They have duties and responsibilities (known as **parental responsibilities**). This covers all issues involving the care, welfare and development of children.

The court presumes parents will have **equal shared parental responsibility** unless it can be proved there is family violence, child abuse or it is not in the best interests of the child. Where parents have equal shared parental responsibility, they must consult with each other and try to reach agreement about major issues such as education, religion, where the child lives, the child's name and health.

Can I move away?

Relocation orders are difficult to obtain. Seek legal advice before moving with your children. If you move without the court's permission or the other parent's consent, the court may order that the child be returned or that the child live with the other parent.

How much time should a child spend with each parent?

There are no hard and fast rules. This will vary with each family and each child. However, the law does promote each parent's ongoing involvement in the child's life after separation. Since 2006 there has been increased emphasis on shared parenting.

If an order for equal shared parental responsibility is made, the court must consider the child spending **equal time** with each parent. If this is not appropriate, the court must consider **substantial and significant time** (weekdays and weekend days as well as other significant days eg. birthdays). To be appropriate, both of these sorts of orders must be in the best interests of the child and able to be put into day to day practice.

Family violence is relevant to making decisions about children and you should always advise your lawyer, counsellor or other professional and the court about whether you have concerns for you or your children's safety

You can find more information in our Separation Booklet at <http://www.wlsq.org.au/resources/legal-toolkit>.

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Legal Advice:

Women's Legal Service at www.wlqs.org.au or 1800 677 278
North QLD Women's Legal Service at www.nqwls.com.au or 1800 244 50
QLD Community Legal Centres at www.qails.org.au
Legal Aid Queensland at www.legalaid.qld.gov.au or 1300 65 11 88

Domestic Violence Assistance:

DV Connect (24hrs/ 7days) 1800 811 811
QLD DV Services at www.qlddomesticviolencelink.org.au
Call 000 for emergencies or Policelink (non-emergency) 131 444 (24/7)
www.police.qld.gov.au/apps/stationlocator/

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