

# PARENTING PLANS & CONSENT ORDERS

## A Workbook for Parents

\*NB: This workbook is intended as general legal information only and does not constitute legal advice.

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## Before You Start

**This workbook has been provided for your benefit and is not intended to be a substitute for legal advice. It is only intended to provide you with a guide to the issues that you should consider before you attempt mediation or enter into a Parenting Plan or Consent Orders.**

Some of the questions in this workbook may not be relevant to your particular situation. If you cannot agree on some issues raised in this workbook, don't let it get in the way of reaching an agreement on other parts. You can always leave some issues to be agreed later.

It is strongly recommended that before you sign any agreement in relation to the children that you obtain legal advice.

This booklet is not suitable for instances where there has been family violence or there is a risk to you or the children's safety and wellbeing. If this applies to your situation or you have concerns about these issues please put down this booklet and seek legal advice.

Women's Law Centre WA Inc. accepts no responsibility for any loss suffered by any person who uses or relies on the information contained in this booklet, or for any loss which may arise due to error or omission in the information. Legal advice from a lawyer should be obtained.

This booklet was prepared by the Women's Law Centre of WA Inc.

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## Introduction

The *Family Law Act 1975 (Cth)* encourages parents/parties to try and reach an agreement between themselves about the care of a child without going to Court.

There are two ways in which you can set out in writing any agreement between yourself and the other parent/party and they are:

- Parenting Plans; and
- Consent Orders.

Regardless of which one you choose the best interests of the child are the most important thing for you to think about when trying to reach an agreement.

If you are seeking orders concerning children you should read and consider the following sections of the *Family Law Act*:

- 60B;
- 60CA;
- 60CC;
- 61DA; and
- 65DAA.

## Western Australia

Please note that in Western Australia the situation regarding de facto relationships is governed by the *Family Court Act 1997 (WA)* which is substantially similar to the legislation contained in the above sections.

## Independent Legal Advice

Whether or not you choose to have a Parenting Plan or Consent Orders you should obtain independent legal advice about the effect and consequences of the plan or orders that are being proposed before you sign it.

At the end of this booklet we have included a weekly and monthly planner for you to use when trying to reach an agreement. Examples of what should be included in a Parenting Plan or in Consent Orders can be obtained from a lawyer, the Family Court of Western Australia or from organisations such as 'Relationships Australia' who provide mediation services.

## Social Media Warning

### **Beware!**

We strongly recommend you **do not** use social media or internet sites, e.g. Facebook or Twitter, Instagram, Snapchat, Chatrooms etc. to discuss or comment on your separation, negotiations involving the child, any legal matters and/or anything the other parent/party may have done.

You should also be careful about what you say in emails and text messages to the other parent or anyone else.

This information could potentially be used as evidence against you in court proceedings, for example by being attached to an affidavit filed in the Family Court.

It is also important to remember that this information could put a person's safety or that of a child at risk.

## Parenting Plans

A Parenting Plan is an agreement between parents/parties about how the child(ren) will be cared for.

A Parenting Plan can include anything that parents/parties need to agree about in relation to the child and covers issues such as:

- Where the child lives and who the child spends time with;
- How you will communicate with each other;
- How and when you will each communicate with the child;
- Processes that you will use for resolving any disputes; or
- Any other aspect of the care welfare and development of the child.

When making a Parenting Plan the most important thing to think about is what is in the best interests of the child.

Because a Parenting Plan is worked out between parents or parties it means that you can both have more control over the process and save a lot of time, money and distress.

A Parenting Plan can be in any form, but to come within the parameters of the *Family Law Act* it must:

- be made free from duress or coercion;
- be in writing; and
- be signed and dated by both parents/parties.

It is a good idea that once the agreement has been signed, each parent/party keep a copy of the agreement. A Parenting Plan can also be provided to the Child Support Agency who can use it to make decisions about child support assessments.

**Please note, a Parenting Plan is not legally enforceable.**

This means that if you or the other parent/party does not comply with it, there are no remedies available. If you would like your Parenting Plan to be enforceable you should consider making an application to the Family Court for Consent Orders.

### Can I change my Parenting Plan?

Yes.

You can change your Parenting Plan at any time so long as you and the other parent/party agree to the changes.

To change your Parenting Plan you and the other parent/party can prepare a new Parenting Plan, you can add or delete parts, add new sections or create a whole new plan.

There are a number of services available that can assist you in negotiating a plan with the other parent/party and with writing a Parenting Plan.

It is recommended that before signing or changing your Parenting Plan you should get independent legal advice about the plan or any changes that you want to make.

## Consent Orders

The Family Court encourages families in dispute to reach an agreement about the care arrangements for the children themselves without the need for court intervention.

If you want your agreement to become legally enforceable you can apply for 'Consent Orders' to be made without having to actually go to Court.

You can do this by completing a Form 11 Application for Consent Orders. There is a kit available on the Family Court of Western Australia website, which you may find helpful. Once Consent Orders have been made by the Court they are legally enforceable. It is recommended that before you sign any court forms that you seek independent legal advice.

## Can I change my Consent Orders?

Yes.

If you both agree, you can change your Consent Orders by either:

1. Filling out a new Form 11 Application for Consent Orders and filing it with the Family Court; or
2. By creating a Parenting Plan.

Before signing or changing Consent Orders you should get independent legal advice about the orders or any changes you want to make.

If you want to change your Court Orders or Parenting Plan and the other party does not agree you should seek legal advice.



## Things to Consider

### Parenting decisions

Parental Responsibility is a responsibility to make decisions to ensure that a child's needs are met. Decisions can include, but are not limited to, where the child lives, medical treatment, education, religious upbringing, passports and the name of the child. Generally, there is a presumption that parents will equally share the decision making in relation to their child.

What types of decisions do you feel should involve both of you (i.e. where the children live, medical decisions, religious decisions, where the children go to school, the types of after school activities that the children participate in?)

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### Live with ...

*(In the past, this has been referred to as residence or custody.)*

There is no presumption that a child has to live with both parents for an equal amount of time. For equal time to be considered it must be shown to be in the best interests of the child and it must also be reasonably practical. It may not be in the child's best interests to spend equal time between both parents in situations such as where the child is very young, the child lives too far away from the other parent, where one parent works away or long hours or where the child may have special needs.

If equal time is not in the child's best interests and/or it is not reasonably practical then you need to consider the child spending substantial and significant time with either yourself or the other parent. This includes spending time with the child on weekends, holidays and weekdays, being involved in the child's daily routine and on important days.

Will the child live with you both equally?

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Who will the child live with?

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Where will the child live?

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**Spend time with ...**

*(In the past, this has been called contact or access)*

If the child does not live with you when will the child spend time with you?

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If the child does live with you when will they spend time with the other parent?

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**Supervision of the Child**

Who else is allowed to look after the child? *(This can include grandparents or other relatives, babysitters, family friends)*

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What happens if either you or the other parent/party is not able to look after the child? *(This might be because of work commitments, illness, etc.)*

Do you want the child to be:

- looked after by the other parent/party (or yourself);
- placed into childcare; or
- cared for by another person?

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### Safety Rules

Can the child ever be left home alone? If so, at what age?

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Is the child allowed to catch public transport, fly or walk on their own? If so, in what circumstances?

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Do you have any other safety rules that you think are important?

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**Significant other people**

Who are other important or significant family and friends that the child can spend time with from both your family and the other parent/party's family?

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When can the child spend time with these 'significant' other people?

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**Communication**

What do you think is the best way for you to communicate with the other parent/party about any issues relating to the child?

1. by telephone;
2. in writing – email, text message or letter;
3. using a communication book; or
4. by other means.

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If the child is not in your care, how and when do you want to be able to speak to or communicate with the child?

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How do you want the other parent/party to talk about you in front of the child?

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How will you talk about the other parent/party in front of the child?

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**Other Concerns**

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**Interstate and International Travel**

Do you agree to the child being taken out of Western Australia for holidays?

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Do you want to be able to take the child out of Western Australia for holidays?

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What are the conditions that should apply if you or the other parent/party want to be able to take the child out of Western Australia or Australia (i.e. this can include a copy of flights, details of an itinerary and contact details for where the child is staying?)

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What information would you want to know if the other parent/party took the child on holiday either interstate or internationally?

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Does the child currently have a passport?

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Do you agree to the child having a passport?

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If so who will keep the child's passport and where will it be kept?

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## Changeovers

Where will changeovers take place?

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When will changeovers happen?

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How would you like the other parent/party to let you know if they are running late or not going to be able to get to the changeover?

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How will you let the other parent/party know if you are running late or are not going to be able to get to the changeover?

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Is there anything else that you think should happen during a changeover?

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## Special Occasions

What do you want to happen during the following times?

- Child's Birthday

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- Sibling's Birthdays

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- Your Birthday

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- Other Parent/Party's Birthday

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- Easter

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- Christmas (including Christmas Eve and Boxing Day)

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- Mother's Day

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- Father's Day

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- Other religious holidays or important family events

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## Health

Will the child be immunised?

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How will you let the other parent/party know if the child is sick?

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In the event of a medical emergency, how do you want to be notified by the other parent/party or how will you let the other parent/party know what has happened?

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Who will be responsible for taking the child to any medical or dental appointments and who will be responsible for paying the fees?

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Are there any other special medical or health matters in relation to the child (this can include behavioural, diet, medical, etc.)?

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## Education and extracurricular activities

Will the child be able to stay at the same school?

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If the child needs to change schools or needs to move into primary or secondary school, how will you agree on a new school for the child both now and in the future? Or what school would you like the child to be able to attend?

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Who will get copies of school reports or do you want the school to send copies to both of you?

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Who will let the school know that your family's circumstances have changed?

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Will you both attend parent teacher evenings and school events, or how will you decide who can attend?

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Who will be the primary contact for the school in the event of an emergency?

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Do you want the child to receive religious education at school?

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What extra-curricular activities would you like the child to be involved in?

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When are the extra-curricular activities on? Where are they held?

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Other matters to consider

Are you going to give the child pocket money? If so, how much?

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Are there any specific religious matters that you want the child to be exposed to or involved in?

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Will you have regular discussions about the child with the other parent/party and how/ where will these discussions occur?

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What do you want to happen if the other parent/party refuses to speak to you, you cannot agree on an issue or you feel they are being unfair?

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## Changes & Reviews

As you or the other parent/party's circumstances change you may need to change your agreement in order to include changes to Family Law in Australia or the age of the child.

You and the other parent/party can agree to review your orders or plan on a regular basis and if so you should include any proposed reviews into your plan or orders.

How often do you think that you should review your plan or orders?

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## What if we cannot agree on a Parenting Plan or on a Consent Orders?

If you cannot agree on arrangements for the child there are several options available to you including:

1. Attending mediation with an Accredited Family Dispute Resolution Practitioner; or
2. If you have already been to mediation then you may need to make an application to the Family Court for the Court to decide what is best for the children.

It is recommended that you seek legal advice in the event that you do not agree to ensure that you understand and are aware of all of the options that are available to you and what the best course of action may be in your circumstances.

## Planners

It may be helpful to use the Weekly or Monthly Planners below to try and draw up or colour in the days and times that you or the other parent/party are to spend with the child.

### Weekly Planner

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
8:00am							
9:00am							
10:00am							
11:00am							
12:00pm							
1:00pm							
2:00pm							
3:00pm							
4:00pm							
5:00pm							
6:00pm							
7:00pm							
8:00pm							
Overnight							

## Monthly Planner

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1							
Week 2							
Week 3							
Week 4							

## Information Sources

You can get additional information from the following sources:

Anglicare WA	1300 114 446 <a href="http://www.anglicarewa.org.au">www.anglicarewa.org.au</a>
Aboriginal Legal Service of WA	(08) 9265 6666 <a href="http://www.als.org.au">www.als.org.au</a>
Community Legal Centres WA	(08) 9221 9322 <a href="http://www.communitylaw.net">www.communitylaw.net</a>
Family Court of WA	(08) 9224 8222 <a href="http://www.familycourt.wa.gov.au">www.familycourt.wa.gov.au</a>
Family Relationship Advice Line	1800 050 321
Family Relationships Online	<a href="http://www.familyrelationships.gov.au">www.familyrelationships.gov.au</a>
Family Law Courts	<a href="http://www.familylawcourts.gov.au">www.familylawcourts.gov.au</a>
Legal Aid Western Australia	1300 650 579 <a href="http://www.legalaid.wa.gov.au">www.legalaid.wa.gov.au</a>
Relationships Australia	1300 364 277 <a href="http://www.relationships.com.au">www.relationships.com.au</a>
<b>Women's Law Centre of WA</b>	445 Hay Street, Perth (08) 9272 8800 <a href="http://www.wlcwa.org.au">www.wlcwa.org.au</a>
<b>Djinda Services (WLCWA)</b>	(08) 9200 2202 <a href="mailto:djinda@wlcwa.org.au">djinda@wlcwa.org.au</a>