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Solicitors

FACT SHEET

Parenting Arrangements – Issues to Consider



If you and your partner separate and you have children together, you need to give consideration to the future parenting arrangements for your children. Decisions will need to be made about who the children will live with, and how and when they will spend time with the other parent. We recommend that any arrangements or agreements should be formalised in writing between you.

Under new Family Law changes introduced on 1 July 2006, you have two choices as to how to go about formalising your parenting arrangements:

1. Parenting Plan

A Parenting Plan is a written agreement which sets out parenting arrangements for children. It must be dated and signed by both parties and must be made free from any coercion or duress.

As Parenting Plans are not legally enforceable by Courts (unlike the Parenting Court Orders described below), if the other party does not follow the terms of the Plan, a Court is not able to force them to do so. However, if your matter ever goes to Court, the Judge involved in your case will consider the most recent Plan when making a decision about any future Parenting Orders.

Parenting Plans may be made by any people with an interest in the care of a child, for example, the child's parents, or by a grandparent or other person who has the care of a child. Although they are not legally enforceable, Parenting Plans need to be just as detailed as Court Orders and should include information about the following issues:-

- Who the children will live with
- The time that the children will spend with the other parent
- How the children will communicate with the parent they do not live with
- How the parents will share parental responsibility and other aspects of the care, welfare or development of a child such as decisions about religion, education, medical issues, travel and other significant matters
- The time that the children will spend with each parent during school holidays, on Mother's Day and Father's Day and at Christmas and Easter
- Any specific medical needs of the children
- Alcohol consumption while the children are in a parent's care
- The children's sporting or other extra-curricular arrangements
- Homework and tutoring arrangements
- Alternative care arrangements such as grandparents and
- What process will be used to resolve any disputes about the Plan, or how to change the Plan.

Parenting Plans can be updated and changed by agreement between both parties and any new Plans must also be in writing, signed and dated. If you would like changes made to a Parenting Plan, but the other party does not agree to those changes, you may need to make an Application at Court.

Although Parenting Plans are able to be entered into so that they change existing Parenting Court Orders, be aware that these amendments only apply to Parenting Court Orders made on or after 1 July 2006. Parenting Plans cannot change Court Orders made before that date.

Parenting Plans are important documents and you should therefore obtain legal advice before either drafting or signing a Parenting Plan.

2. Court Orders

Parenting Orders are made by a Court, either by agreement and with the consent of both parties (in which case neither of you will need to attend Court), or after a Court hearing, and cover the same sort of issues covered by Parenting Plans. Parenting Orders made or approved by a Court are legally binding on both parties and any infringements of the Orders can therefore be dealt with by the Court.

Because of their enforceability and the obligations they place on both parties, we recommend that Court Orders are the better way of setting out the future parenting arrangements in relation to your children. The same issues are dealt with in Court Orders as are dealt with in Parenting Plans, both sets of documents are in writing, are equally as detailed as each other and are signed and dated by both parties, but Court Orders are able to be enforced if breached.

The changes to the Australian Family Law system which occurred on 1 July 2006 are complex and wide-ranging and we invite you to seek our assistance in making the changes work well for you and your children.

About Caldwell Martin Cox

Caldwell Martin Cox is a law firm established for over 50 years in Narellan, Camden, Picton and Tahmoor. Our specialist lawyers advise clients on family law, the purchase and sale of property, criminal and traffic law, litigation and dispute resolution, business law, personal injury matters, commercial law, wills and estates.

We have a team of five family lawyers, including a Law Society Accredited Specialist in Family Law, who operates from all four offices and serve clients across a broad region.

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