

## Your Children After Separation

Separation can be painful for everybody involved, especially children. During this challenging time, children need support, love and contact with both of their parents and other significant people, such as grandparents. Some certainty for the future is also important for everyone.

We encourage separating parents to work out arrangements for children amicably. Arrangements in relation to children can be finalized by way of the following:-

1. A Parenting Plan;
2. Consent Orders; or
3. By way of a Disputed Hearing in which a Judge or Judicial Registrar makes a final decision regarding the children and where they live.



Each of the above address who the child lives with and who the child spends time with, and the level of communication the child has with either parent.

### Equal Time

If it is reasonable and practicable, and is in the best interests of the child you should consider making an arrangement that the child spending equal time with both parents. You need to consider whether it is practical to make this type of arrangement for your child, based upon your circumstances. You should consider the following:

- i. How far apart you and the other parent live;
- ii. The ability of you and the other parent to implement this type of arrangements;
- iii. How well you and the other parent communicate with each other to resolve any problem that comes up in relation to the arrangement;
- iv. The impact the arrangement will have on the child;



### Substantial and Significant Time

If it is not appropriate for your children to spend equal time with both you and your partner, you should consider an arrangement that allows for the other parent to spend substantial and significant time with the child, provided this is reasonably practical and in the best interests of the child.

Substantial and significant time refers to the child spending time with both parents on a mix of weekends, holidays and regular days and nights. It

means both parents are involved in the child's daily routine, as well as sharing in special events, such as birthdays, and other events of significance.

### **Equal Shared Parental Responsibility**

Except where there are issues of violence or abuse, the law presumes that it is in the best interests of the child, for the parents to have equal shared parental responsibility.

This does not mean that the child shall spend equal time with each parent. Rather, equal share parental responsibility means that both parents have an equal role in making decisions about major long term issues that effect their children, such as schooling and health care. If you agree to shared parental responsibility, you will need to consult with each other and make an effort to come to a joint decision about long term issues.

### **Parenting Plans**



Recent changes to the Family Law Act, have the effect of encouraging separating parents to work out arrangements for children between themselves, without either party having to go to Court. One of the ways in which parents can do this, is by entering into a "Parenting Plan".

#### **What is a Parenting Plan?**

A Parenting Plan is a voluntary agreement that covers the day to day responsibilities of each parent, the practical consideration of a child's daily life, as well as how parents will agree and consult on important issues about their children. It can be changed at anytime, as long as both parents agree.

#### **Who can make a Parenting Plan?**

To be a Parenting Plan under the Family Law Act, 1975, the Plan must be made and signed by both parents of the child. However, the Plan can include other parties such as grandparents, step-parents and close relatives.

#### **Are Parenting Plans a legal document?**

To be legal, a Parenting Plan must be in writing, signed and dated by both parents. It must be made free of any threat, duress or coercion.

A Parenting Plan is **not** legally enforceable and is different from a Parenting Order, which is made by a Court. Parents who make a Parenting Plan can ask the Court to make Consent Orders in the terms of that Plan. Once made, the Consent Orders are legally binding, they have the same effect as any other Order made by the Court.

If parents end up in Court at any time after they have entered into a Parenting Plan, the Court must take into account, the most recent Parenting Plan when making new Orders in relation to the child, and if it is in the child's best interest to do so. The Court will also take into account, the extent to which both parties have complied with their obligations in relation to the child, which may include the terms of the Parenting Plan.

The benefit of a Parenting Plan is that, it allows flexibility. Parents can agree to change arrangements in a Parenting Plan without having the necessity of going back to Court. The disbenefit of the Parenting Plan is that, it is not legally enforceable, so that if the party breaches the terms of the Plan, you cannot take them to Court, on the basis that they have contravened an Order, as the Parenting Plan in effect, is not a Court Order.



### **What can be included in the Parenting Plan?**

A Parenting Plan can be unique to anybody's circumstances. It should be practicable, simple and as concrete as possible. A Parenting Plan can deal with any aspect of the care, welfare and development of a child. The kind of things that may be covered in a Parenting Plan may include:-

- (a) Who the child lives with;
- (b) What time the child will spend with each parent;
- (c) What time the child will spend with other people, such as grandparents, step-parents etc.
- (d) How the parents will share parental responsibility and consult about decisions (like which school the child will attend);
- (e) How the child will communicate with each parent or other people;
- (f) What arrangements need to be made for special days, such as birthdays, Christmas, Easter etc;
- (g) What process can be used to change the Plan or resolve any disagreements about the Plan;
- (h) The agreement can incorporate the maintenance of the child in the same form as a Child Support Agreement;
- (i) Any other issue about parental responsibility or the care and welfare of the child.

### **Consent Orders**

As previously discussed a Parenting Plan is not a legally enforceable document. To have a legally enforceable agreement court orders must be obtained. This does not mean that the parties need to attend the family court,

both parents can agree on arrangements and can submit that “agreement” to the Family Court to be made a court order. If parties have entered into a Parenting Plan they may replicate this Plan into Consent Orders, giving the Plan a legal effect.

The majority of our clients reach agreement with their partners through negotiations with them directly, or with the assistance of mediation. We then help them to draw up that agreement and have it made a court order.

## Going to Court



If you cannot agree on arrangements for your children, you may need to have the Family Court decide for you. In deciding parental arrangements, the Court must always consider:-

- (a) The best interests of the child;
- (b) The extent to which both parents have complied with their obligations in relation to the child.

Prior to commencing proceedings in the Family Court, the parties are required to attend Family Dispute Resolution. This involves both parties attending upon a Counselor in an attempt to resolve their parenting dispute. If agreement is not reached, the parties receive a Certificate from the Counselor and are required to produce this Certificate when filing an Application in the Family Court.

If the matter proceeds to the Family Court, and the Court is to determine the living arrangements in relation to a child, the Court has adopted what is known as “LAT” (Less Adversarial Trial). The aim of these proceedings is that, the matter will be conducted without undue delay and with as little formality and legal technicality and form as possible.

If you require our assistance with parenting plans or in drafting parenting orders please do not hesitate to contact us on 9525 8100.

