

Can parenting orders be changed?

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Parenting orders are orders of the court that provide for parenting arrangements, and as such, they are legally binding. Parenting orders can only be changed in very specific circumstances.

Applying for parenting orders

Although they are called ‘parenting orders’, anyone concerned with the care, welfare, or development of the child can apply to have Parenting Orders made, not just the biological parents. For example, grandparents, aunts, uncles or guardians can apply for parenting orders.

Parenting orders can be made on an interim or final basis.

Interim parenting orders are temporary arrangements put in place until the parties reach an agreement or proceed to a court trial.

Final parenting orders are final arrangements put in place by the court. They can only be altered in limited circumstances.

What do parenting orders cover?

Parenting Orders can deal with a number of issues surrounding arrangements for the care of children, including:

- who the child lives with;
- where the child lives;

- who the child will spend time with (and where and for how long);
- how the child is to communicate with another person; and/or
- any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for the child (for example, a change of name or where the child will attend school).

When making parenting orders, the court's paramount consideration is the best interests of the child.

Parenting orders vs parenting plans

Parenting orders are different from a 'parenting plan' or 'parenting agreement'.

Parenting plans are informal agreements made between parents as to the day-to-day arrangements for their children. They can be a great option if you and your former spouse are on amicable terms and are able to communicate appropriately with each other post-separation.

Parenting plans can be altered or revoked at any time by either party. They are not legally binding.

Can parenting orders be changed?

Changing parenting orders by consent

In the event both parents consent to changing parenting orders, they can do this either by making an application for consent orders to the court or just enacting the changes as agreed. Parties can agree to make changes to their parenting orders by discussing it between themselves, engaging lawyers to negotiate on their behalf, or by attending a mediation.

It is best to get any agreement to change the current parenting orders in writing so that there will be no argument afterwards that someone may have contravened or breached the original orders. This is because there can be serious consequences for failing to comply with a parenting order.

In order for the court to consider an application alleging that the other party contravened the original court order, the court must be satisfied that a breach (or non-compliance) of the parenting orders took place **and** that it took place without a reasonable excuse. It may be that if the contravening party can show that there was agreement to vary the orders, the Court will view that to be a reasonable excuse as to why the orders were not followed.

Whether a party had a 'reasonable excuse' to contravene the order will depend on the individual circumstances of each case. We recommend you seek legal advice about any potential consequences before making any decisions.

GET ADVICE FROM A FAMILY LAWYER: 03 8625 8957Parents can also enter into a new parenting plan that deviates from the current parenting orders if they agree to do so.

Changing parenting orders after a “significant change in circumstances”

If parents do not agree to change the current parenting orders, they can make an application to the court seeking changes to the orders.

The Court will only entertain a new application after final orders are made about children if there has been a “significant change in circumstances”. This is based on the understanding that it will only be in the child’s best interests to expose them to further proceedings if there has been a significant change of circumstances since the making of the orders. This is known as the rule in *Rice v Asplund*.

There a many different factors that may satisfy the court that there has been a significant change in circumstances, however, it will ultimately depend on the circumstances of each individual matter.

In some cases, a significant change in circumstances has been:

- A parent has relocated or is seeking to relocate a significant distance;
- The child’s health has changed significantly;
- There has been a significant and strong change in the child’s wishes; and
- Abuse or family violence.

Ultimately, whether there has been a significant change in circumstances is discretionary and will be a matter for the court to decide. We recommend seeking legal advice before making any application to the court to ensure that your matter is properly prepared.

Contravention of the original parenting orders

If a parent contravenes a parenting order, depending on the situation and the type and seriousness of the contravention, the court can vary the primary order (i.e. the initial parenting order that was made).

The court can vary a primary order even if the contravention is not actually proven or if it is proven but a reasonable excuse is found.

This is also the case if the current orders are wholly unworkable; for example, a party has moved interstate, and the ‘spend time’ orders are no longer able to be complied with.

An order that varies a parenting order is in itself a parenting order. As such, when considering whether or not to vary a primary order, the court must still treat the child's best interest as the paramount consideration. It cannot make an order that is not in the best interests of the child.

What should I do if I want to change parenting orders?

If you want to change your current parenting orders, the process is the same as obtaining parenting orders in the first instance.

The first thing to do (provided it is safe to do so) is speak directly with the other parent to discuss your proposed changes and see whether you can reach any agreement. If there is no agreement, you can negotiate changes through lawyers or attend family dispute resolution (mediation) to see whether an agreement can be reached on some or all issues.

If there is still no agreement, we recommend you seek legal advice as to the potential outcome of any application to vary the parenting orders. You will need to satisfy the court that there has been a significant change in circumstances and, as such, the parenting orders should be varied.

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It may be that if you are successful in re-opening parenting matters (that is, you have convinced the court that there is a significant change in circumstances that warrants a change in the current orders), the court may be inclined to vary orders in a way not anticipated by you.

This is because the court can only make orders in the best interests of the child. This could result in orders being made that you did not seek and do not want, as what you consider to be in the best interests of the child may be different to what the court determines. This is why we recommend you seek legal advice to determine what the likely outcome of your application may be.

In the event parenting matters are re-opened, your matter will progress through the court system as usual. The court has published a Practice Direction that explains the way in which parenting matters will progress.

Seek legal advice from a family lawyer

We can help you work out the most efficient and cost-effective way to resolve any disputes around varying parenting orders.

Whether you are applying for or defending an application for a change in current parenting orders, it is important to get legal advice about any potential consequences that follow and how best to present your case.

How a family lawyer can help

If you're working through parenting arrangements after separation and you need assistance to ensure the best interests of the children are paramount, our family lawyers have significant expertise and experience in all aspects of parenting disputes.

Contacting Smith Family Law

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