



A guide to family law Consent Orders

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Date: Sunday April 14, 2024

When a relationship ends, many separated couples can reach an agreement about [parenting arrangements](#) or [property settlement](#) without legal assistance. Although there is no legal requirement to formalise such an agreement, sometimes parties might prefer to make their agreement legally binding, especially in relation to property matters. Consent Orders are a way in which parties can formalise any agreement they have reached with their ex-partner.

What are Consent Orders?

A Consent Order is a written agreement that is approved by a Registrar of the Court, provided it is considered to be a fair and appropriate agreement.

The relevant agreement is drafted in legal terms and signed by the parties. The application is then sent to the Court for approval. Once approved, the Court will formally make the agreement Orders of the Court. This means that the agreement becomes a legally binding agreement, and the Court can impose penalties if one or both of the parties refuses to follow the Orders.

If agreement has been reached about all issues and the agreement is fair, obtaining Consent Orders is usually a straightforward process. Consent Orders can be made without physically going to Court.

When are Consent Orders appropriate?

Consent Orders are appropriate when parties can reach an agreement between themselves, or with the assistance of lawyers, to decide what the outcome of their family law matter should be. If you believe you can successfully negotiate with the other party regarding parenting and/or property settlement but would like your agreement to be legally enforceable, then Consent Orders may

be appropriate.

While there is no legal requirement to formalise a parenting agreement, Consent Orders can provide you with a greater level of certainty that the agreement reached will be upheld by the other party, as a Consent Order makes your agreement legally binding and enforceable.

This is particularly helpful if you and the other party have participated in [mediation](#) or have struggled to reach agreement and are concerned about whether the other party will follow through.

Any agreement reached in relation to property settlement is best formalised to protect your financial future. Formalising your property settlement prevents either party from [coming back years after separation](#).

It is important to note that the Court can only make Consent Orders in relation to children if the Court is satisfied that the proposed agreement is in the [best interests of the child](#). Similarly, the Court can only make Consent Orders in relation to property if the Court is satisfied that the proposed agreement is just and equitable in all the circumstances.

If you are not sure whether the Court will approve of your proposed agreement, we recommend you seek legal advice to see whether formalising the agreement by Consent Orders is the most appropriate option.

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What can Consent Orders cover?

Consent orders include an agreement about the following matters.

Parenting arrangements

Consent Orders in relation to parenting matters can make provision for your child's short and long-term care and welfare. This could include arrangements for who the child lives with, spends time with and communicates with. It could also include an agreement about specific issues, such as where your child will attend school or [whether your child will receive vaccinations](#).

Financial matters – property settlement

Property matters can include an agreement about how the assets and debts of the relationship are divided between parties.

This might include each party keeping what is held in their name, or it might be an arrangement to sell a family home and divide the proceeds of sale.

Superannuation is another category of property that parties [commonly decide to split following separation](#), particularly if one party has less superannuation because they were the primary carer

of children for a period of time.

Spousal maintenance

If one party has a clear need for financial support following the end of a relationship, and the other party has the financial capacity to provide additional assistance, parties may agree to the payment of spousal maintenance. Parties may agree on a lump sum amount or a periodic payment.

How can I make family law Consent Orders?

Parties negotiate the terms of the proposed Consent Orders

Both parties must agree to the specific terms of the agreement. Unlike an informal arrangement, Consent Orders require a clear and comprehensive agreement on the relevant issues.

Occasionally, parties may struggle to reach an agreement without assistance or have difficulty articulating their agreement in a format that the Court will accept. If this is the case, a family lawyer may be able to help you reach an agreement with the other party. A specialised family law mediator is another way in which parties can resolve the issues in dispute.

If you choose to take your matter to Court without having made preliminary attempts to reach an agreement, the Court may order you to attend mediation first before the Court will make a decision. It is important that you only bring Court proceedings if you cannot reach an agreement or it is not appropriate for the parties to negotiate.

If there is [family violence](#) involved or one party is refusing to negotiate, Consent Orders may not be an appropriate avenue.

If you are unsure about whether Consent Orders are possible in your situation, we recommend you speak with a family lawyer as soon as possible.

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The Orders are submitted to the Judge or Judicial Registrar to be approved

Once an agreement is reached, the proposed Consent Orders will be filed with the Court to be approved by a Judicial Registrar or Judge.

The Court must be satisfied that any proposed parenting agreement upholds the best interests of the child or children of the parties and that any proposed financial agreement is just and equitable.

Even if parties have no difficulty in negotiating the terms of the agreement, we recommend that a family lawyer review the proposed Consent Order application before it is submitted to the Court to ensure a Judge or Judicial Registrar is likely to approve the parties' agreement.

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How long do I have to wait for the court to approve Consent Orders?

Once the proposed Consent Orders have been filed with the court, it normally takes around two to four weeks for the Court to review the orders. A court must be satisfied that the orders are just and equitable before they are approved. Occasionally, the Court will request further information before making a determination.

Are Consent Orders legally binding?

Yes. Once a Court approves Consent Orders, they have the same effect as if you had the Court make a determination. This means that if one party does not comply with the orders, then there may be legal consequences for non-compliance.

You can read more about breaching Court Orders in our earlier blogs:

• [Compliance with Parenting Orders](#)

• [Compliance with Family Law Financial Orders](#)

As Consent Orders are legally binding, we recommend that you speak with a family lawyer to ensure your agreement is well-considered and appropriate in the long term. While you can [vary Consent Orders](#), this must be done by agreement or through Court proceedings, however, a Court is only likely to vary orders in exceptional circumstances.

Time limits for parenting and property settlement Consent Orders

You can make an application for Consent Orders as soon as you have separated on a final basis. You do not have to wait for a divorce application to be granted.

Parenting Consent Orders

It remains open for parenting matters to be addressed through Consent Orders at any point following separation if it is appropriate (i.e. the children are under 18 years of age, or there are circumstances which necessitate the making of the Consent Orders in parenting matters).

Financial/property settlement Consent Orders

Once a divorce order has been granted, [you have 12 months to reach an agreement regarding financial matters](#) with your former partner.

De facto relationships

You have 24 months following the [end of a de-facto relationship](#) to reach an agreement regarding financial matters.

There are circumstances when the Court will consider that even though this time limit has passed, Consent Orders are still appropriate for the parties. If you think you are out of time but would like to make an application for Consent Orders, you should seek advice from a family lawyer as soon as possible.

Get help from a family lawyer

It's not unusual for parties to need some assistance when looking to formalise parenting and/or property settlement following separation.

If you're working through parenting arrangements and property division after separation and you need assistance to ensure your entitlements are being protected (either through the making of an application for Consent Orders or another avenue), our family lawyers have significant expertise and experience in all aspects of family law.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.