

Russell Kennedy Family Law Webinar:
Separated and have a child or children, now what?

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Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar
- We have BD tech support live to assist with any technical issues
- Use the chat function for any comments/technical issues
- Use the Q&A function for specific questions related to the webinar content – Questions will be addressed at the end of the webinar
- There will be a post webinar survey link sent at the end of the webinar. We value attendee feedback
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback

Disclaimer

The information contained in this presentation is intended as **general commentary only** and should not be regarded as legal advice

Should you require specific advice on the topics or areas discussed, please contact the presenters directly

Introduction



What we will cover today

- *PARENTING PLANS*
- *CONSENT ORDERS*
- *COURT ORDERS*
- *HOW TO VARY FINAL ORDERS*
- *FAMILY DISPUTE RESOLUTION*

COURT CONSIDERATIONS FOR PARENTING ARRANGEMENTS



COURT CONSIDERATIONS FOR PARENTING ARRANGEMENTS

- Best interests of the child.
- No safety or risk issues for the child – a meaningful relationship with both parents and other family members.
- Parents consult with each other for major decisions for the child.
- Routine and stability for children

S60CC Family Law Act

Primary considerations

- a) the benefit to the child of having a meaningful relationship with both of the child's parents;
and
- b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

S60CC Family Law Act

Additional Considerations

- a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
- b) the nature of the relationship of the child with each of the child's parents and other family members.
- c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:
 - i. to participate in making decisions about major long-term issues in relation to the child; and
 - ii. to spend time with the child; and
 - iii. to communicate with the child;
- d) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;

S60CC Family Law Act

Additional Considerations Cont.

- e) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either of his or her parents or any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
- f) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- g) the capacity of:
 - i. each of the child's parents; and
 - ii. any other person (including any grandparent or other relative of the child);to provide for the needs of the child, including emotional and intellectual needs;

S60CC Family Law Act

Additional Considerations Cont.

- h) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- i) if the child is an Aboriginal child or a Torres Strait Islander child:
 - i. the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
 - ii. the likely impact any proposed parenting order under this Part will have on that right;
- j) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- k) any family violence involving the child or a member of the child's family;
- l) if a family violence order applies, or has applied, to the child or a member of the child's family--any relevant inferences that can be drawn from the order, taking into account the following:

S60CC Family Law Act

Additional Considerations Cont.

- i. the nature of the order;
 - ii. the circumstances in which the order was made;
 - iii. any evidence admitted in proceedings for the order;
 - iv. any findings made by the court in, or in proceedings for, the order;
 - v. any other relevant matter;
- m) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- n) any other fact or circumstance that the court thinks is relevant.

What works best for your child/ren and your situation?

Considerations

- How old are your children?
- Do your children have a primary attachment to one parent?
- Do your children have special needs?
- What is reasonably practical? E.g. 'equal time', or 'substantial and significant time'
- Where will the parents be living?
- Who will care for the children when one parent is unavailable?
- Do your children engage in extra-curricular activities or culturally significant events?
- How will the children communicate with the other parent when they are not spending time?

PARENTING PLANS



PARENTING PLANS

- Written informal agreement between parents.
- Not binding.
- Can be varied at any stage by agreement.
- Best suited for parents who are amicable and flexible.
- Not suitable where there are safety concerns.

What to include in a parenting plan?

We invite our guests to include any suggestions in the poll.

- A. Spend time with and communication arrangements child/ren spend with their parents (school holidays and special occasions)
- B. Parental Responsibility
- C. Changeover arrangements (neutral collection and pick-up points)
- D. Medical requirements (vaccinations)
- E. Property Orders
- F. All of the above except E

COURT ORDERS



COURT ORDERS

- **Where Orders are agreed upon by consent, terms can be filed with the Court and they will become final and cannot be changed unless by agreement or further Court Order. Limited circumstances. (*Rice & Asplund*).**
- **If no agreement, proceedings can be commenced in Court to seek Parenting Orders.**



CHANGE IN CIRCUMSTANCES – RICE V ASPLUND

In the event you seek to vary final orders of the court it can only be achieved in appropriate circumstances.

The purpose of the rule in Rice v Asplund is to protect children from being exposed to the **ongoing litigation** hence the threshold is high.



WHAT IS A CHANGE IN CIRCUMSTANCE?

- Relocation
- New arrangements
- A party has re-partnered or remarried
- Abuse/risk
- Agreement
- Health

Important to remember:

Even if a party can meet the threshold for a change in circumstances if the original final orders meet the “best interests of the child” the application could untimely fail.

Family Dispute Resolution (FDR)

- If no agreement can be reached, proceedings can be commenced in Court.
- Prior to taking this step, it is compulsory for parents to attempt Family Dispute Resolution (*Exemptions apply – e.g. urgency or not appropriate due to safety concerns/family violence*).
- FDR is a form type of mediation aimed to assist parties in reaching an agreement
- A neutral FDR Practitioner acts as mediator.
- Can be legally represented or attend individually.
- Requirement before commencing proceedings.
- If FDR is unsuccessful then a Family Dispute Resolution practitioner can issue a section 60I certificate to allow an application to be made to the family law court.

What can the Court do to assist?

The Court will consider what is in the best interests of the child and this may include:

- ensuring time is taking place by making interim Orders for children to spend time with both parents;
- Ensuring children are protected from harm – such as making orders for parent’s time with a child is supervised.
- Appointing a lawyer for the children – known as an Independent Children’s Lawyer – to advocate for your children and assist the Court in making Orders that are in the child’s best interests.
- Ordering a Child Impact Report- this is prepared by a court child expert who provides information in a report about the experiences and needs of the children in the context of the current dispute before the Court. The expert will consider a range of issues relating to (the presence of risk and the children’s relationships).

Poll Examples

Jack and Ally have two children age 10 and 9.

Jack and Ally separated when the children were age 2 and 3 and entered into a parenting plan at that time where the children spend alternate weekends with Jack and live with Ally.

Now that the kids are older, Jack seeks to spend more time with the children.

He has communicated this to Ally but she has not agreed.

What should Jack do?

- A. Request that Ally attend Family Dispute Resolution**
- B. Speak to a Family Lawyer**
- C. Withhold the children based on what time arrangements Jack wants**
- D. All of the above except C**

Poll Examples

Alice and Craig have two children together, age 3 and 5.

Alice alleges that Craig is violent toward her and the children.

There are police charges before the Court which Craig is defending and the police have issued an ADVO for Alice and the children's protection.

Alice and Craig are no longer living together and the children are spending no time with Craig.

Craig has asked Alice to go to mediation.

What should Alice do?

- A. Seek Family Law Advice**
- B. Attend the mediation even though she has safety concerns**
- C. Seek Social Service guidance through Domestic Violence Services**
- D. All of the above except option B**

Q&A - Your Russell Kennedy Contacts



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