



FAQ

A BRYANT MCKINNON RESOURCE

Childrens Matters

This document summarises some of the more commonly asked questions regarding childrens matters. If your question is not answered on this page or you need further advice on any family law related matter please phone us on 02 6651 8440 or email info@bryantmckinnon.com.au.

How are child support payments calculated?

The Australian Government makes an assessment of child support payments between separated parents. The law specifies the complex formula for this assessment. The key elements are the costs of raising children, the incomes of each parent, the number of children in the family and the amount of care each parent provides.

Alternatively, you and your former partner may reach an agreement without using the legislated formula by entering into a contract known as a Child Support Agreement. A "limited" agreement must provide for payments at least equal to the child support assessment. A "binding" agreement may be for any amount.

What can I do if I think child support payments are unfair?

The government may update its assessment if you advise it of



changes in care arrangements, income or other relevant changes in your circumstances.

If you disagree with a child support assessment, in some cases you may apply to the Child Support Registrar to change the assessment. This generally needs to be done within 28 days of the assessment. There are options for appeal if the Registrar rejects your application.

Do Child Support Agreements have to be formalised?

Yes. Child Support Agreements must be agreed in writing and

signed by both parents. They must also be formally registered with the Department of Human Services. In addition, if you enter into a "binding" Child Support Agreement, you and your former partner must each obtain independent legal advice before you sign.

How do child custody arrangements affect child support payments?

The child support formula takes into account overnight care, from at least 2 nights per fortnight, provided by you or your former partner (known as "regular care"). If



each of you provides care between 5 and 9 nights per fortnight, this is referred to as “shared care”, and both parents may receive payments. Daytime contact alone will not affect child support payments.

How does custody of children work after separation?

We now talk about “parenting arrangements” rather than “custody”, “guardianship” and “access”. Generally, as a first step you and your former partner will meet with a qualified practitioner for a formal discussion known as Family Dispute Resolution. You are not required to participate in Family Dispute Resolution if in circumstances of urgency or where there are allegations of family violence or child abuse.

If you are able to reach agreement on parenting arrangements, you may apply to the Court to approve the arrangements by way of Consent Orders. Consent Orders are legally binding and enforceable.

Do parenting arrangements (“child custody”) have to go through the courts?

Not necessarily. You can apply to the Court to resolve your parenting arrangements if you are unable to agree after meeting for Family Dispute Resolution.

The Court also has a role in approving agreed parenting arrangements

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by issuing Consent Orders. A Court will only make Orders by consent if it is satisfied that the agreement reached between the parents is in the best interests of the children.

What happens if our parenting arrangements do end up in court?

After hearing your dispute, the Court may make orders covering overall

parental responsibility as well as who your child will live with, spend time with and communicate with.

How does the Court decide parenting arrangements?

When assessing what is in a child’s best interests the Court has to firstly consider the benefit to a child of having a meaningful relationship

with both parents, and the need to protect a child from physical or psychological harm, abuse, neglect or family violence. There are several other considerations the Court may also take into account.

Shared parental responsibility is the starting point. This means that you and your former partner should both have input into important decisions about your child’s life. It does not necessarily mean that your child will

equally divide their time between you and your former partner.

What is a Parenting Plan? How does this differ from a Consent Order?

A Parenting Plan is a contract between you and your former partner documenting your agreed parenting arrangements. You may choose to enter into a Parenting Plan instead of seeking the Court's approval of your agreed parenting arrangements through Consent Orders. The main difference is in your ability to enforce the arrangements. If your former partner breaks your agreement, the Court may only impose penalties if it has been approved in Consent Orders.

What do I do if I want to relocate with my children?

You should obtain the express written consent of your former partner in advance. If that is not possible, you should seek the Court's permission to relocate. The Court will determine what arrangement is in the best interests of the child, by looking at the relationship between the parents and the child, the child's age, the difficulty and expense of visits with the other parent, the reasons for relocation, and whether it is appropriate for the other parent to also relocate.

What happens if the children do not want to spend time with the other parent?

The Court will always consider the views of the child. The amount of weight the Court gives to those views will depend on the age and maturity of the child.



Can I get a passport for my children without the consent of my former partner?

Yes. You can apply to the Passports Office, which may issue a passport without the consent of the other parent in special circumstances. You can also apply to the Court.

What should I do if my former partner is threatening to take the children overseas?

You can apply to the Court for a Family Law Watch List Order, which will be served on the Federal Police. Your child's name will be placed on a database to alert airport officials if your former partner attempts to remove your child from the country. A Family Law Watch List Order can only be revoked by further Court Order.

You can also submit a Child Alert Request form to the Passports Office to ensure that the Office will alert you

if it receives a passport application for your child.

How do I apply to have my children's names changed?

You should seek the express written consent of your former partner. If this is not possible, you can apply to the Court. The Court will determine whether the name change is in the best interests of the child, by looking at short and long-term effects, potential embarrassment for the child, potential identity confusion for the child, potential impact on the relationship between the child and the parent whose name they originally bore.

This is general information only. We are here to advise you on your specific circumstances; please get in touch to set up an initial consultation.