

A comprehensive guide to family law consent orders

Date: Sunday February 16, 2025

Resolving family law disputes can often feel overwhelming, especially when emotions are running high. However, there is a way to formalise agreements on issues like parenting matters, property division, and financial support (spousal maintenance) without a lengthy and costly Court battle. This blog will explain what family law consent orders are, how they work, and the application process in Australia.

What are family law consent orders?

Family law consent orders are legally binding agreements made between separated parties. Consent orders are approved by the Federal Circuit and Family Court of Australia and, for those in WA, the Family Court of Western Australia ("Family Court").

These orders can cover family law matters such as:

- **Parenting arrangements**: These include who the children will live with, how time will be shared, how decisions will be made, holiday arrangements, international travel, and communication between parties.
- **Property settlement**: How assets, debts, and other financial matters will be divided, including superannuation.
- **Spousal maintenance**: Payments made by one spouse to support the other after separation.

Consent orders are drafted by the parties after they reach an agreement on how to resolve their matters. The Family Court must then approve that agreement for it to be formalised into a consent order. If the Court formalises the consent order, the agreement carries the same weight as a decision made by a Judge, Judicial Registrar or Magistrate.

If the matter cannot be resolved by the parties by consent, then ultimately, they may need to make an application to the Family Court seeking the Court make a decision, and the parties will need to swear affidavits and put greater material before the Court to

support the position/orders they are seeking the Court to make.

Benefits of family law consent orders

Any experienced family lawyer will tell you that there are many advantages to reaching an agreement with your former spouse without the need for the Court's intervention.

Faster and less expensive

One of the key benefits of consent orders is that they allow parties to reach a resolution without going to trial. Court proceedings in family law are notoriously time-consuming, expensive, and emotionally taxing. The process of applying for consent orders is usually quicker and more affordable.

More control

The parties have much more control over their matter's resolution by ratifying their agreement into a consent order. The parties are usually in the best position to make decisions about their finances and/or parenting arrangements.

Less stressful

Going to Court can be emotionally draining. Consent orders allow you to avoid the stress of a trial and work with your ex-partner to come to a resolution in a way that works for everyone, especially if children are involved.

Legally binding

Once approved by the Family Court, consent orders are legally enforceable. This means that if one party does not comply with the terms, the other party can take legal action to enforce the order.

How to apply for family law consent orders

Applying for consent orders involves a few key steps. Here is a simplified breakdown of the process.

Negotiating the agreement

Before applying for consent orders, you and your ex-partner must agree on the terms. This can be done through:

Direct negotiations;

Communication via lawyers;

- Mediation;
- Family dispute resolution (FDR) services.

We always encourage anyone negotiating with their ex-partner to seek the support of a family lawyer or mediator. They can help you understand your entitlements, as well as negotiate using the law rather than emotions.

Drafting the consent orders

Once you and your ex-partner have reached an agreement, the next step is to draft the consent orders. These documents will outline the specific terms you both agree upon. We recommend you seek the help of a lawyer to ensure that the agreement is fair, clear, and legally sound.

GET ADVICE FROM AN EXPERIENCED FAMILY LAWYER: 08 6245 0855

If the consent orders detail parenting arrangements, the Family Court may require additional information such as, for example, a parenting plan. This is to show that both parents are on the same page about their children's needs.

Submitting the application to the Court

Once the consent orders have been drafted, the next step is to submit them to the Family Court. You can do this online through the Federal Circuit and Family Court of Australia or in person at the Court registry.

The application must include the following:

The signed consent order agreement;

Any supporting documents (such as a parenting plan or financial documents for property settlements).

Court approval

Once the application is submitted, the Family Court will review the proposed orders. In most cases, the Court will approve them if they are fair and in the best interests of the children (if they include parenting arrangements). Once approved, the Court will make the orders and send a copy to both parties.

In some instances, the Court may ask for more information or suggest changes before approval. If the Court is not satisfied, it may reject the consent orders.

Enforcement of the orders

Once the consent orders are approved by the Family Court, they become legally binding. If one party does not comply with the terms of the orders, the other party can apply to the Family Court for enforcement.

This could include a range of actions, such as requiring the non-compliant party to explain why they haven't followed the orders or even ordering them to pay fines or penalties.

You can read more about this in our earlier blog, "Breaching Family court orders – what can I do?".

Common areas covered by family law consent orders

Family law consent orders can cover various issues depending on the specific circumstances of your separation. Here are some of the most common areas.

Parenting orders

This is perhaps the most common type of consent order. Parenting consent orders include any agreement about:

Living arrangements: Where the children will live and how time will be shared between parents.

Decision-making: How decisions about the children's education, health, and welfare will be made.

Communication: The level of communication between parents regarding the children.

These orders are always made with the child's best interests as the paramount consideration, including factors like the child's age, the parents' ability to cooperate, and the child's relationship with both parents.

Property settlements

Consent orders can be used to divide assets, debts, and superannuation after separation. These may include:

Division of property: How property, including the family home and other assets, will be split between the parties.

Superannuation splitting: How the parties' superannuation balances will be divided.

Debt division: How will any debts, such as credit card balances or loans, be paid?

Spousal maintenance

In some cases, consent orders can address spousal maintenance. This is financial support paid by one partner to the other following a separation. The orders can specify the amount and frequency of payments.

Can I change my family law consent orders?

Consent orders are legally binding which means they usually cannot be disregarded by the parties. However, there are circumstances where they may need to be changed.

Property Consent Orders

If both parties agree to vary a final property order, the Court may consider an application. If only one party wishes to vary the order, they may bring an application to the Family Court.

However, the Court must be satisfied that:

there has been a miscarriage of justice due to fraud, duress, suppression of evidence (including failure to disclose relevant information), false evidence, or other circumstances;

it has become impracticable to fully or partially carry out the order due to circumstances arising after the order was made;

a person has defaulted on an obligation under the order, and it is just and equitable to vary or replace the order due to the resulting circumstances;

exceptional circumstances affecting the care, welfare, or development of a child mean the child (or the applicant caring for the child) will suffer hardship if the order is not varied or replaced;

a proceeds of crime order has been made involving the property or one of the parties to the marriage or relationship.

Parenting Consent Orders

Again, if both parties wish to vary a final parenting order, they can make an application to the Family Court. The Family Court does not set out specific criteria to change a parenting order. However, there must be consideration to whether there has been a significant change in circumstances. This is often referred to as the rule of Rice & Asplund. The new amendments to the Family Law Act from 6 May 2024, did try and clarify the steps necessary to amend a parenting order, however, at the date of this blog, this is yet to be truly tested under the new law.

Examples of a change in circumstances include:

A change to the living arrangements for either party, which now makes the previous orders impractical; and/or

A change in the child's development which renders the previous orders no longer in the child's best interests; and/or

A risk concern which was not contemplated in the initial orders.

Final thoughts and key takeaways when considering family law consent orders

Family law consent orders offer a way for separating couples to resolve disputes without the need for lengthy Court proceedings. By reaching an agreement on important issues and getting it approved by the Court, you can have peace of mind knowing that the terms are legally binding.

Key takeaways

Family law consent orders are legally binding agreements approved by the Court.

They cover issues like parenting arrangements, property settlements, and spousal maintenance.

The process involves negotiating an agreement, submitting it to the Court, and obtaining approval.

Consent orders can be changed if both parties agree or if there's a significant change in circumstances.

Get help from a family lawyer

If you are considering family law consent orders, it's always best to consult with an experienced family lawyer to ensure your agreement is fair and equitable, comprehensive, and in the best interests of all parties involved, particularly any children of the relationship.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.