

PARENTING ORDER PRECONCEPTIONS - 5 MYTHS DEBUNKED

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1. MYTH: Family Law Favours Mothers

One of the most common parenting myths is the old-fashioned notion that “Mothers get custody, and Fathers get weekends”. The *Family Law Act* is no longer so ‘cut and dry’ when it comes to separation, in fact Courts are increasingly reluctant to favour one parent over another in Parenting Orders.² Alongside this shift in discretion, living arrangements decided after separation will always place ‘the best interests of the child’ as the paramount concern; a guiding principle throughout Family Law.³ Parents may not have a ‘right’ to spend time with their children, but the Courts recognise that their children have a ‘right’ to a meaningful relationship with each parent. As 85% of single parent families are fatherless families, it is ‘in the best interests of the child’ for Courts to encourage contact with Fathers.⁴ 18 months after separation the most common arrangement is for children to live with their Mother most nights (66%) in a year, but over time these statistics begin to equalise.⁵ It is uncommon, in any Parenting Order case, that children are granted no contact with their Father at all (9%).⁶

2. MYTH: Equal Parental Responsibility Means Equal Time

This leads into the presumption of equal shared parental responsibility when making Parenting Orders, and the misconceptions that surround this ‘rebuttable’ presumption.⁷ If parents have a dispute-free, collaborative history and the child has a healthy relationship with both parents, then a Judge must consider equal time. If the Court finds 50/50 parenting is not practical or not in the child’s ‘best interests’, Parenting Orders will reflect this. Parenting Plans or Court Orders are made in order to facilitate, to the *maximum* extent possible, a meaningful relationship with both parents. Minimising a parent’s time with their child is not ideal, but 50/50 arrangements can risk disrupting a young child’s upbringing and

¹ Paralegal, Blanchfield Nicholls Partners, 2020.

² *The Family Law Act 1975* (Cth).

³ *Ibid* s 60CA

⁴ Bill Muehlenberg, *The Fiasco of Fatherlessness*. Wollongong, NSW: Dads4Kids Fatherhood Foundation, 2013, pp. 1-8; *The Family Law Act 1975* (Cth) s 60CA.

⁵ Kaspiw, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L. et al. (2015a). *Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments)*. Melbourne: Australian Institute of Family Studies. <aifs.gov.au/publications/experiences-separated-parents-study>.

⁶ *The Family Law Act 1975* (Cth) s 60CA.

⁷ *Ibid* s 61DA.

development too much. A child's age, their parents' working hours, and travel time between homes, are just some of the factors that the Courts will consider.

3. MYTH: Parents Do Not Need to Consult in Decisions Affecting the Child

Without Parenting Orders in place, parents may not feel obliged to consult with each other in decisions affecting the child. On the contrary, Court Orders may negatively interpret one parent's failure to consult with the other about major long-term decisions such as moving houses with the child, their religious practices, educational needs, or medical care. If such a decision encumbers the child's relationship with the other parent, this could be particularly adverse for future Parenting Orders. Failure to comply with Parenting Orders for joint parental responsibility in major long-term decisions could mean a contravention application and serious consequences under Family Law legislation.⁸ Parents should make a habit of consulting with one another early on in separation and parenting matters for the benefit of both the child and future arrangements.

4. MYTH: Parenting Plans are Binding

It is important to note that Parenting Plans are non-binding agreements. Although signed by both parents, Parenting Plans are not submitted to the Court and not formalised into Consent Orders. Should one parent breach a Parenting Plan it consequently cannot be enforced by the Court, unlike Parenting Orders. Whether made by consent or decided by a Judge, there are serious consequences for breaching a Parenting Order. Penalties range from fines or the other party's legal costs, to community service or imprisonment.⁹ Complex parenting arrangements are oftentimes better facilitated by these legally enforceable Orders.

5. MYTH: All Parenting Matters End Up in the Courts

Media portrayals aside, most family law cases reach settlement out of Court. Although seeking legal representation is strongly advised, parenting matters may never reach the Family Court or Federal Circuit Court. The Courts will act as a last resort, should the parties be unable to reach an agreement. Unless a parenting matter is urgent or the child faces a 'real' safety risk, any reputable lawyer will encourage a client to attempt external mediation or arbitration with their partner. Making a genuine effort to reach an agreement before filing Court proceedings is a far cheaper (and emotionally kinder) option for all parties involved.

We hope this article has armed you with some vital information to help safeguard you against parenting preconceptions. For further enquiries regarding Parenting Plans or Parenting Orders please fill out a Blanchfield Nicholls enquiry form, available [here](#).

⁸ Ibid s 65DA(2).

⁹ Ibid.