

WHEN YOU HAVE A DISPUTE ABOUT VACCINATING YOUR CHILD AGAINST COVID-19.

This factsheet has information about family law parenting issues in relation to disputes about whether to vaccinate your child against COVID-19. It will explain your legal rights and options. It also has the contact details of organisations that can help you.

Language and Terminology

It is useful to understand the language and terminology used in parenting matters. This will help you work out your obligations and available options.

Some common terms used in this factsheet include:

Term	Meaning
Parental responsibility	All of the duties, powers, responsibilities and authority that by law, parents have in relation to children. Parental responsibility relates to major long-term decisions about a child. These decisions include: <ul style="list-style-type: none">• The child's education• The child's religious or cultural upbringing• The child's health• The child's name• Changes to a child's living arrangements that make it significantly more difficult for the child to spend time with a parent.
Equal shared parental responsibility	The Federal Circuit and Family Court of Australia (the court) presumes that it is in a child's best interest to make an order for parents to have equal shared parental responsibility. This presumption does not apply if there is family violence. If an order is made for equal shared parental responsibility, parents must consult each other and agree on major long-term decisions about a child.
Sole parental responsibility	In certain circumstances, including if there has been family violence or abuse, parents cannot agree on major long-term decisions in a child's life, or it is otherwise in the child's best interest, the court can make an order for sole parental responsibility. An order for sole parental responsibility means you can make all the major long-term decisions for your child without having to consult the other parent.



Best interest of a child

The best interest of a child is the most important consideration when the court makes orders about children. There are primary and additional considerations that are in a child's best interest.

The **primary considerations** are:

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

The need to protect children from harm is given greater weight where there is family violence, child abuse or risk of exposure to either.

The **additional considerations** are:

- the views of the child;
- the nature of the relationship of the child with parents and others
- the extent each parent has participated in making long term decisions about a child, spending time with the child and communicating with the child;
- the extent each parent has met their obligations to maintain a child
- the effect of change to the current arrangements for a child
- the practical difficulties and expense of 'spending time with' and 'communicating with' a parent and the impact on the child of maintaining personal relationships and direct contact regularly with both parents;
- the capacity of the parent and others to provide for the needs of the child;
- the maturity, sex, lifestyle and background of the child and parents;
- if the child is an Aboriginal or Torres Strait Islander child, the right to enjoy Aboriginal or Torres Strait Islander culture;
- the parent's attitude to the child and to parenting;
- any family violence involving the child or a member of the child's family;
- an order that is least likely to lead to further proceedings; and
- any other fact or circumstance the Court thinks relevant.

If parents are able to reach an agreement about parenting arrangements, they can have:

- 1) an **informal agreement**;
- 2) a **parenting plan**; or
- 3) apply for **consent orders**.

If parents are not able to reach an agreement, they can apply to court for **parenting orders**.

INFORMAL AGREEMENT

An informal agreement can be written or oral. The benefit of an informal agreement is that it gives parents the flexibility to change the parenting arrangements when needed. Both parents retain parental responsibility for the child/ren. An informal agreement cannot be enforced if one parent does not follow the agreement.

PARENTING PLAN

A parenting plan is a written agreement, signed and dated by you and the other parent. It sets out the future care arrangements for your children. It can cover who has parental responsibility for the child, who the child lives with, spends time with and communicates with, child support payments and other issues.

Parenting plans are not legally binding and cannot be enforced if one parent does not follow the agreement. However, the Court will consider the arrangements in a parenting plan if your case later goes to Court.

CONSENT ORDERS

If parents want legally enforceable orders, they can ask the Court to make orders that reflect the agreement they've reached. These are called consent orders and are legally enforceable. Consent orders are difficult to change without agreement between the parents to change the orders or without a significant change in circumstances, which is the test the court needs a parent to establish before the court will consider changing consent orders.

PARENTING ORDERS

If parents can't reach an agreement, they can apply to the Court for parenting orders. The Court will make a decision based on the best interests of the child. Parenting orders are legally enforceable.

Who can make decisions in relation to whether a child should be vaccinated?

A decision to vaccinate a child, including whether a child should be vaccinated against COVID-19, is a major long-term decision in a child's life and is decided by whoever has parental responsibility for that child. Each parent automatically has parental responsibility for their child regardless of their relationship status including whether they are separated, divorced, married, de facto or never been in a relationship at all. This means that unless there is a parenting order that states otherwise, each parent can individually make important decisions about their child.

If you already have parenting orders for your child, it is important you get legal advice about how those orders affect who can make decisions to vaccinate your child against COVID-19 and how those decisions can be made.

If you have a parenting order that states you and the other parent have equal shared parental responsibility, usually this means you are required to consult the other parent and agree on any major long-term decisions about a child, including whether to vaccinate your child against COVID-19.

If you have a parenting order that states you have sole parental responsibility for a child, this usually means you can make all the major long-term decisions for your child, including about COVID-19 vaccinations, without having to consult the other parent. The court is usually very reluctant to make an order for sole parental responsibility.

Your legal rights and obligations will depend on what is specifically stated in your parenting orders.

What will be taken into consideration when deciding whether to vaccinate a child against COVID-19?

The *Family Law Act 1975* (Family Law Act) requires all decisions to be in the best interests of a child. It's important that any decision you make in relation to whether your child should be vaccinated against COVID-19 is in your child's best interest.

Some factors to consider when making this decision include the risk to your child if they are not vaccinated against COVID-19, your child's health, current professional medical advice and current information in relation to COVID-19 that has been broadcasted by State and Commonwealth governmental health officers.

It is considered essential for a child's best interest that decisions in relation to vaccines should be based on current professional medical advice. This includes specific medical advice on your child's individual health situation. Qualified doctors owe professional duties of care when administering vaccines.

What to do if parents cannot agree about vaccinating a child against COVID-19?

The Family Law Act encourages parents, where safe to do so, to agree on parenting arrangements, including decisions about whether to vaccinate a child, without going to court.

If there are no prior parenting arrangements

If it's safe to talk with the other parent, discuss your views about whether to vaccinate your child against COVID-19. If you reach an agreement, put the agreement in writing. It is important to be aware that the court cannot enforce an informal agreement or a parenting plan.

If you are unable to reach an agreement about vaccinating your child, in most cases you must participate in **family dispute resolution** (FDR) with the other parent before you make an application to the court for parenting orders. FDR is a way of sorting out your legal problems without having to go to court, and is commonly known as mediation. You and the other parent can discuss your legal problems and try to reach an agreement with the help of a neutral, trained person known as the Family Dispute Resolution practitioner. If a genuine effort to resolve the dispute is not made, it may affect future court decisions about legal costs.

There are some circumstances when you do not have to participate in FDR. These include:

- If you and the other parent are applying for consent orders;
- Your application is in response to the other party's application;
- The court is satisfied there are reasonable grounds to believe there has been or is a risk of abuse or family violence;
- Your application is about parenting orders that were made in the last 12 months and the person who breached the order showed serious disregard for their obligations under the order;
- Your application is urgent; or
- One of the parties is unable to participate in FDR for reasons such as having a disability or living in a remote location.

If you cannot reach an agreement during FDR, or an exemption applies, you can apply to the court for parenting orders.

If there are prior parenting arrangements

If it's safe to talk with the other parent, discuss your views about whether to vaccinate your child against COVID-19, and any changes you wish to make to your current parenting arrangement to allow for this. If you reach an agreement, put the agreement in writing. You can change a parenting plan by making a new one which is dated and signed by both parents. If you have a parenting order that was made on or after 1 July 2006 and both parents agree on the changes, you can change the order by making a parenting plan. The parenting plan can over-ride the entire parenting order or it can over-ride just some of it. It's important to make clear in the parenting plan what you are intending to change.

If you can't reach an agreement and you have court orders, you will need to get the order varied to show the new arrangements. You will need to show the court that the need to change the order is urgent and that the usual requirement to do FDR is not appropriate before applying to the court. You will also need to show the court that the dispute in relation to vaccinating your child against COVID-19 has meant there has been a substantial and significant change in circumstances which mean it is appropriate for the court to make new orders and that your proposal is in the best interests of the child.

What if I agree with the other parent about most major-long term decisions in our child's life but we cannot agree about whether to vaccinate our child against COVID-19?

If you and the other parent generally agree about most major-decisions in your child's life but cannot agree in relation to vaccinating your child against COVID-19, it is possible to make parenting arrangements that allocate the decision making of specific issues (such as COVID-19 vaccinations) to one parent. All other aspects of parental responsibility can remain unchanged if you and the other parent are generally able to agree about those issues.

The Federal Circuit and Family Court of Australia National Covid-19 List

The Court has established a court list dedicated to dealing exclusively with urgent family law disputes that have arisen as a direct result of the COVID-19 pandemic.

To be eligible for the COVID-19 list you must satisfy **all** of the below criteria:

- Your application is being filed as a **direct result of, or if indirect, has a significant connection to, the COVID-19 pandemic**.
- Your matter is **urgent or of a priority nature**.
- The application is accompanied by an affidavit (using the Court's [COVID-19 template affidavit](#)) that addresses all of the criteria.
- If safe to do so, you have made reasonable attempts to resolve the issue but you were unsuccessful.
- The matter can be dealt with using electronic means (e.g. using telephone or video link).

Disputes in relation to COVID-19 vaccinations is listed as an example of a type of matter that would be appropriate for the National COVID-19 List on the court's website.

Family law disputes about whether to vaccinate a child against COVID-19 can be complex, particularly where there is a history of domestic and family violence by a parent or other caregiver, or any existing court orders in place. We strongly encourage you to get independent legal advice on your rights and obligations in your particular situation.

Where to get help

Federal Circuit and Family Court of Australia

Tel: 1300 352 000 (National Enquiry Centre)

<https://www.fcfcoa.gov.au/covid-list>

Family Relationship Advice Line

Tel: 1800 050 321 Monday to Friday, 8:00am - 8:00pm / Saturday, 10:00am - 4:00pm

LawAccess

Tel: 1300 888 529 Monday to Friday, 9:00am - 5:00pm

Women's Legal Service NSW

Tel: 8745 6988 or 1800 801 501 (rural) www.wlsnsw.org.au

Tuesdays 1:30pm - 4:30pm / Thursdays, 9:30am - 12:30pm,

Interpreters - Translating and Interpreting Service (TIS)

Tel: 131 450 (24 hours)

Hearing Impairment - National Relay Service

Tel: 1800 555 630 (TTY service)