

Episode 38: Summary

Episode name: Perfecting Parenting Plans

Guest(s): Vanessa Jackson

What area(s) of law does this episode consider?

Family law, specifically parenting plans, parenting agreements and consent orders as an alternative to family court orders. Vanessa Jackson discusses the advantages of settling parenting disputes outside of court and gives tips and tricks on how to navigate parenting plans.

Why is this topic relevant?

Court mandated parenting orders are an expensive, lengthy and inflexible way to resolve disputes about care and responsibility for children. Parenting plans present a more effective, efficient and workable alternative to the court process and can save parents and children alike a lot of stress in what is already a very stressful time in their lives.

What cases or legislation are considered in this episode?

Children and Young Persons (Care and Protection) Act 1998 (NSW)

- S 61 'Applications for care orders': orders seeking for the care and protection of a child or young person are initiated by the filing of a care application by a family dispute practitioner pursuant to this section.

Family Law Act 1975 (Cth)

- S 60CC 'How a court determines what is in a child's best interests': outlines the factors the court considers in determining the outcome of an application for care orders. The primary considerations being the 'benefit to the child of having a meaningful relationship with both parents' (ss 2(a)) and 'the need to protect the child from physical or psychological harm' (ss 2(b)).

Rice v Asplund (1979) FLC 90-725

- The Full Court of the Family Court sets out the rule that final orders made in relation to parenting matters in court should not be revisited and varied unless significant change has occurred in the parties' circumstances since the making of the final order. Evatt CJ makes the comment that the court:

'...should not lightly entertain an application ... To do so would be to invite endless litigation for change is an ever-present factor in human affairs ... there must be evidence of a significant change in circumstances.'

Bondelmonte v Bondelmonte 259 CLR 662

- In this case, a father took his two teenage sons aged 16 and 14 to New York, leaving their mother in Australia. The father decided they were going to stay in the United States indefinitely, causing the mother to seek urgent orders from the court requiring the two boys to return to Australia. The trial judge granted the order in favour of the mother, despite the two teenage sons expressing their wishes to stay in the U.S. The father appealed the decision on the basis

that the court did not give proper consideration to the boys' views, however, the High Court dismissed the appeal and found that the trial judge had in fact considered the boys' views but had decided to give greater weight to the long-term implications of the boys' separation from their mother and sister in Australia. The case supports the rule that the court will make orders in the best interests of the child and that while the child's own views may be considered, they are but one of many factors that the court will take into account.

What are the main points?

- Increasingly, parenting matters are being resolved through parenting plans and other forms of alternative dispute resolution, rather than parenting orders made by a court.
- Parenting plans are analogous to a contract between parents. They identify and outline agreements parties have made regarding arrangements concerning their children, their parental responsibilities and any other relevant consideration with regard to the wellbeing of the family.
- Consensual parenting plans are highly flexible in comparison with parenting orders imposed on families by the courts. Unlike in proceedings for parenting orders where the court is bound by the rule in *Rice v Asplund* not to entertain an application to change parenting orders unless a significant change in circumstances has occurred, clauses can and commonly are inserted into parenting plans which allows for a review and renegotiation of the plans at regular intervals.
- There are significant delays within the family law system in obtaining final courts orders. This delay can itself be a factor in the final judgements as the circumstances or dynamics of a family can change drastically during the 2-3 year period it takes for proceedings to come to fruition. This entails a significant amount of uncertainty for all parties involved, making parenting plans all the more appealing as a method of family dispute resolution.

What are the practical takeaways?

- Unless the circumstances of a family dispute involve family violence or another factor making cooperation between parents impracticable, most parties would be better off going through the more inexpensive, flexible and efficient avenue of family dispute resolution that are parenting plans.
- One downside of parenting plans over parenting orders is that parenting plans are unenforceable. Matters involving family violence or abuse may not be appropriate to be resolved through a parenting plan.
- Due to the fact that parenting plans are unenforceable, they require an active and cooperative approach in order for them to work. Parenting plans are a collaborative approach to co-parenting and not a final, authoritative or binding agreement. They work only as well as parties are willing to engage and solicitors should consider this in drafting and negotiating parenting plans.

[ALRC 'Family Law for the Future - An Inquiry into the Family Law System' final report
March 2019](#)

[Joint Select Committee on Australia's Family Law System interim report October 2020
Family Court of Australia 'An evaluation of the Family Court of Australia's Magellan
case-management model' report 2007](#)