

Final Parenting Orders: Can I change them?

Article by Townsville Family Lawyer, Emma Donald

22 July 2021

What are Final Parenting Orders?

Final Parenting Orders are orders that are made by either the Family Court of Australia or the Federal Circuit Court of Australia, which provide for the care arrangements in relation to Children.

Parenting Orders can be made **by Consent**, when both parents have agreed to the future care arrangements for their Child/ren.

Parenting Orders can be made at a **Final Hearing and be determined by a Judge**. This occurs if the parents are unable to come to an agreement and an Application is made to the Court.

When orders are made, they are deemed to be **Final**.^{*} This means that ultimately and ideally, they are Orders that will remain in place until the Child/ren are 18 years old.

(*If orders are made at an Interim hearing, they may be **Interim** orders.)

What happens if the Final Orders are no longer viable?

Or what if yours or your co-parent's circumstances have changed?

Can your Final Parenting Orders be changed?

Well, it depends.

How can you change Final Parenting Orders?

Option 1: This is the **easiest option**. If you discuss proposed changes with your co-parent, and the changes are agreed to, you can document the new agreement into *Consent Orders* and file an *Application for Consent Orders* in the Court that varies your previous Orders. The Court will consider the newly proposed Orders, and if they are in the best interests of the Children, the Court will make those new Orders.

Option 2: If negotiation breaks down with your co-parent, or you are having some difficulty agreeing on certain changes, you can arrange to attend mediation with a Family Dispute Resolution Practitioner with your co-parent. At mediation, you can discuss the changes you wish to make to the Orders.

If an agreement is reached, a Parenting Plan can be entered into.

Section 64D of the *Family Law Act 1975* says: "(1) A parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is (a) entered into subsequently by the child's parents; and (b) agreed to, in writing, by any other person (other than the child) to whom the parenting order applies" If you then want to turn that Parenting Plan into Consent Orders, then see **Option 1** again.

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Option 3: If you and your co-parent cannot agree to change the Final Parenting Orders after you have tried either Option 1 or 2, you will need to bring an Application to Court to ask the Court to vary the Final Parenting Orders. This can be very expensive and time consuming.

Bringing an Application to Vary Final Parenting Orders: What you need to show the Court.

As mentioned above, the Court makes Final Orders on the basis that they are meant to be just that, **Final**. The court considers that it is not ideal for parents to continue coming back to Court. The court seeks to protect children from being exposed to ongoing litigation.

The Court has made a rule about this. The rules says that before a party can bring a matter that has been determined on a final basis *back to Court*, they must show the Court, and the Court must be satisfied that, there has been a *significant change in circumstances* for the Child or the parties, since the Final Orders were made.

As with everything Child related under the *Family Law Act*, any change must also be in the Child/ren's best interests.

This rule comes from the case, *Rice v Asplund*. ([Rice, M.A. and Asplund, C.J. \[1978\] FamCA 84; \(1979\) FLC 90-725; \(1978\) 6 FamLR 570 \(22 November 1978\) \(austlii.edu.au\)](#))

In this Case, the Full Court of the Family Court stated that the Court:

"Should not lightly entertain an application to reverse an earlier custody order... 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."

The Court went on to say:

"... the Court would need to be satisfied by the Applicant that... there is some changed circumstances which will justify such a serious step, some new factor arising or, at any rate, some factor which was not disclosed at the previous hearing which would have been material."

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What is a “*Significant Change in circumstance?*”

There are a number of factors which the Court might consider to be a significant change in circumstance, including:

- Someone is seeking to relocate with the Children.
- Parties living arrangements have changed significantly, and this may impact on the time with the Children.
- If drugs and/or alcohol were an issue when Final Orders were made (whether by Consent or by a Judge at a Final Hearing) and that parent is now clean and sober.
- Significant health issues of the Child or a parent.
- Abuse of a Child or parent.

The Court is always hesitant to re-open proceedings after Final Parenting Orders have been made. You will need to consider what your significant change in circumstances are before proceeding to make an Application. The Court must be satisfied of this before your Final Orders can be changed.

Where to from here?

It is always a good idea to obtain advice from an **experienced family lawyer** when thinking about changing parenting agreements or orders.

We always recommend consulting with an experienced family lawyer to discuss your situation and obtain advice about what the Court might consider to be in your child/ren's best interest.

Everyone's situation is unique.

O'SheaDyer Solicitors Townsville have experienced family lawyers who practice exclusively in Family Law.

We offer first appointments for family law enquiries for a low fixed fee of \$220. You have an hour appointment with an experienced family lawyer where you obtain customised advice about your situation. And you receive a 15 minute follow up call from the lawyer a week later.

Please call us to make an appointment. 47 725 155.
