

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 10

Senator Stott-Despoja asked the following question at the hearing on 31 October 2005:

- a) Can the Department explain the rationale for having parenting plans override court orders? Lack of clarity in Consent Orders and parenting plans already seems to be a major contributor to the total number of court applications.
- b) Can you advise what safeguards will be put in place to ensure that one parent does not coerce the other parent into agreeing to a parenting plan that will not be scrutinized in any way and that will override a prior court order?
- c) Can you explain how parents will be expected to understand what obligations they are or are not under?

The answer to the honourable senator's question is as follows:

- a) New section 64D inserts a default provision into parenting orders such that they will be subject to any subsequent parenting plan. This will only be the case where the parenting plan is agreed to in writing by any other person to whom the parenting order applies and is signed and dated. The rationale behind this provision is that generally people should be encouraged to resolve ongoing issues away from court. This provides the option to vary existing parenting orders by agreement, and, if parties so choose, using the new services that will be available.
- b) Parenting plans must be in writing, signed by the parties and dated. They are voluntary and can be changed at any time. Where the court has concerns that one parent may coerce the other parent into agreeing to a parenting plan that would not be in the best interests of the child, the court would have a discretion to conclude that the matter constitutes an 'exceptional case' and include the default provision in the parenting order. The court's discretion is a safeguard to ensure that the best interests of the child remain paramount.
- c) It is expected that the parenting plan will set out the understanding of both parties as to their ongoing obligations. In order to assist parents, there are a number of provisions in the Shared Parenting Bill to ensure that advisors explain to parents the interaction between parenting plans and parenting orders. In particular, new paragraph 63DA(2)(e) requires advisors to inform their clients that an existing parenting order may be subject to a parenting plan that they subsequently enter into. It is envisaged that the information relating to parenting plans that advisors are required to provide under this section could be provided in written form, such as brochures.