



ITS TIME TO TALK LAWS PROTECTING CHILDREN FAMILY LAW

Presented by Maha
Najjarine
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MY ROLE

Legal Aid NSW

Family Law – Early Intervention Unit

Community Legal Education Solicitor



Contact:

Level 1, 160 Marsden

Street Parramatta 2150

Phone: 1800 551 589

Email: Maha.Najjarine@legalaid.nsw.gov.au



WHO WE HELP

- Anyone with a legal problem in New South Wales. We assist in most areas relating to criminal, civil and family law.
- Special focus on reaching disadvantaged communities.
- Does not have to be a citizen or permanent resident.
- Litigation: meet the jurisdiction, means and merit tests

Representation
**Telephone
Advice**

Outreach

**Community
Legal
Education**

Duty

**Minor
Assistance**

**Law
Reform**

FEDERAL LAW:

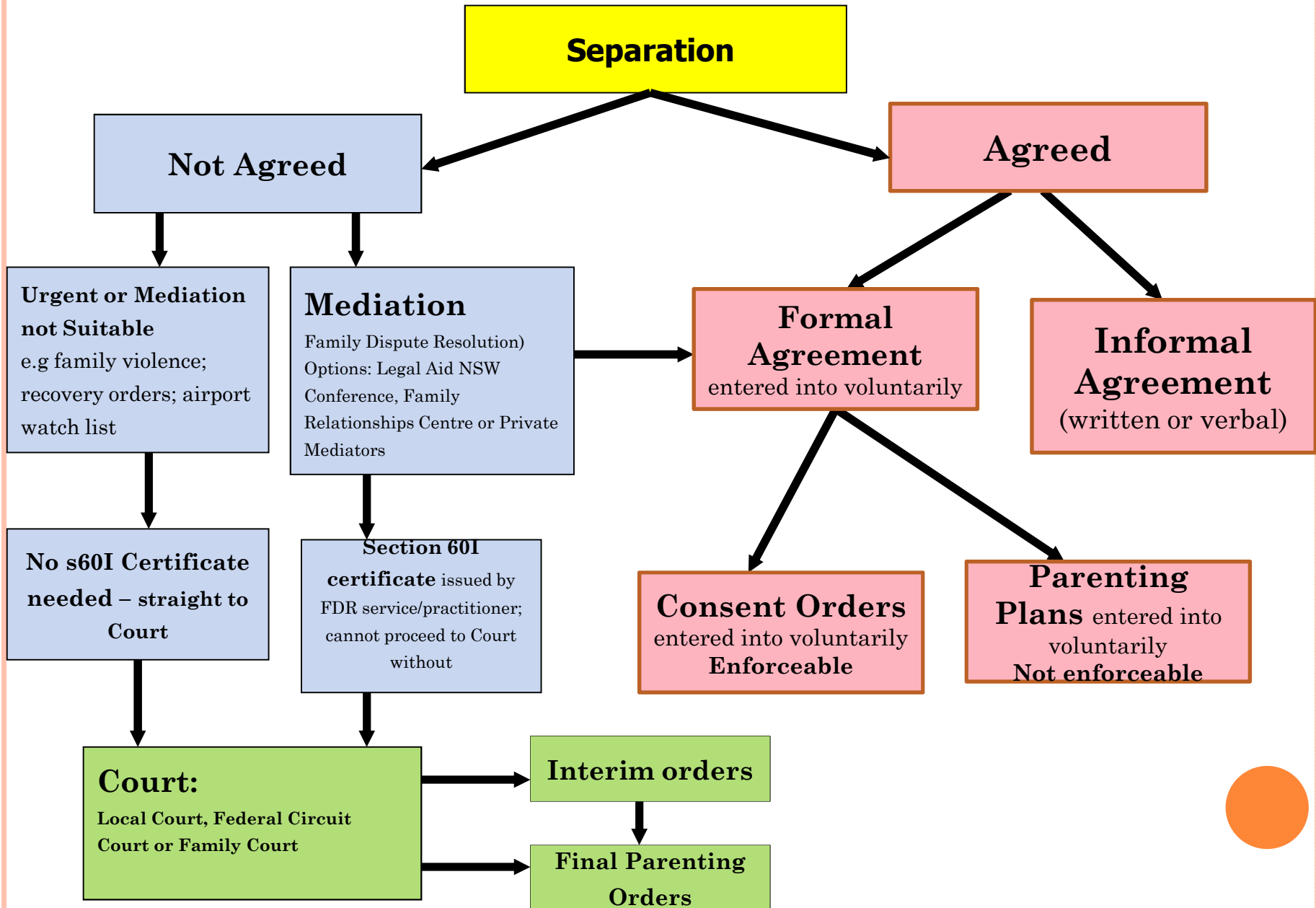
- **Family Law Act 1975** (and associated rules)
 - Arrangements for children
 - Division of Property
 - Spouse Maintenance
 - Divorce
 - Family Court, Federal Circuit Court, Local Court

- **Child Support (Registration and Collection) Act 1988**
 - Child Support Assessment Act 1989
 - Child Support
 - Child Support Agency

- **State Law:**
 - **Children and Young Persons (Care and Protection) Act 1998**
 - Care and protection of children
 - Children's Court
 - **Crimes (Domestic and Personal Violence) Act 2007**
 - Apprehended Violence Orders
 - Local Courts



PARENTING ARRANGEMENTS FOR CHILDREN



FAMILY LAW ACT AMENDMENTS

- Family violence amendments to the *Family Law Act* apply for all new matters filed at court on or after **7 June 2012**.



OBJECTS OF THE ACT SECTION 60B

- a) Benefit of both parents having meaningful involvement
- b) Protection from physical, psychological abuse or exposure to abuse, neglect or family violence.
- c) Ensuring children have adequate and proper parenting
- d) Ensuring parents fulfil their duties and responsibilities
- e) To give effect to UN Convention on the rights of the Child.



“BEST INTERESTS” PRINCIPLES

60CC of the Family Law Act

- A. benefit to child in having a meaningful relationship with both parents and
- B. the need to protect the child from physical or psychological harm and from being subjected to, or exposed to, neglect and/or abuse

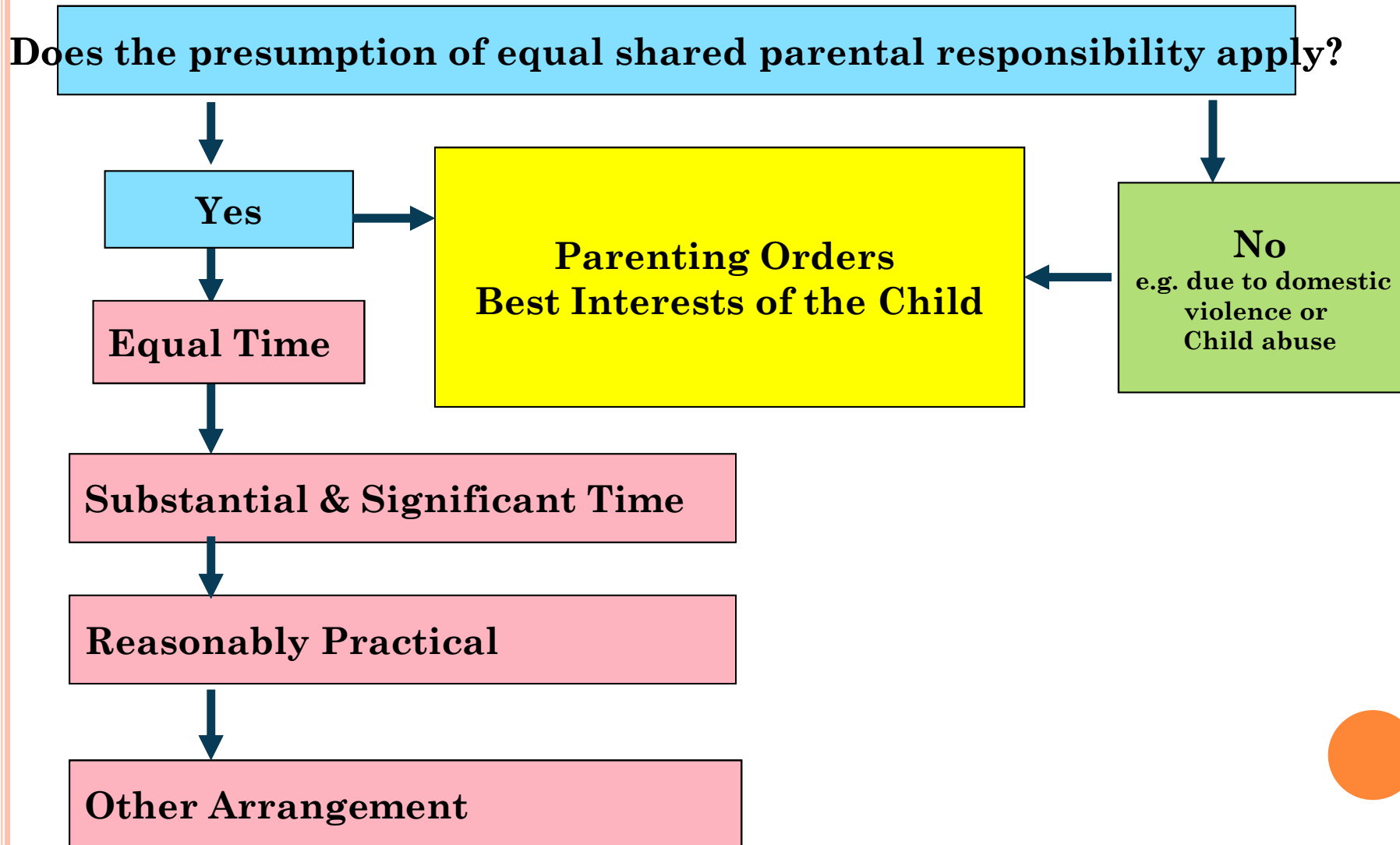
The new legislation has added a new principle:
In applying these principles the court is to give
greater

weight

to the



COURT DECISIONS ABOUT CHILDREN



OVERVIEW OF CHANGES

- Broader definition of abuse and family violence
- More weight given to safety of children over meaningful relationship with both parents
- Removing 'friendly parent' provision
- Removing costs order for 'false allegations'
- Broader scope to consider interim, consent and past ADVOs as well as final and contested



NEW DEFINITION OF FAMILY VIOLENCE

family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the "family member") or causes the family member to be fearful.

Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.



EXAMPLES THAT THE ACT USES ARE:

- Assaults
- Sexual assaults or sexually abusive behaviour
- Stalking
- Repeated derogatory taunts
- Intentionally damaging or destroying property
- Intentionally causing death or injury to a family member's animal
- Removing financial autonomy
- Withholding financial support for dependent family member
- Preventing connections with family, friends or culture
- Unlawful deprivation of liberty

This is not an exhaustive list. It is a guideline.



SOME EXAMPLES CHILDREN AND FAMILY VIOLENCE

- Overhearing threats of death or personal injury
- Seeing or hearing an assault between family members
- Comforting or helping the family member victim of assault
- Cleaning up after an assault or damage to property
- Being present when police or ambulance attend



EXCEPTIONS FROM FDR REQUIREMENT

- Applying for **consent orders**
- Court is satisfied there are 'reasonable grounds there has been or is a **risk of abuse or family violence**
- Some **contravention** applications
- **Urgent** applications
- A **party is unable to participate** in FDR (e.g. they have a disability or live in a remote location)



HOW THE FAMILY COURTS RESPOND TO VIOLENCE

- Exemption from FDR
- “Form 4” - How the court is notified of allegations
- *Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged.*
- Independent Children’s Lawyer (ICL)
- Family Reports
- Specialist program – Magellan
- Sole occupancy orders
- Contravention orders
- Injunctions



CHILD ABDUCTION



- Application for a Recovery and Location Order.

Reduce risk of overseas abduction

- Keep passports safe.
- Ask passport office to notify you of any applications for passports.
- Court order preventing a parent from taking children out the country. Place child on Australian Federal Police Airport Watch List.
- Notify the Australian Federal Police of your application and place child on the 'Airport Watch List'.

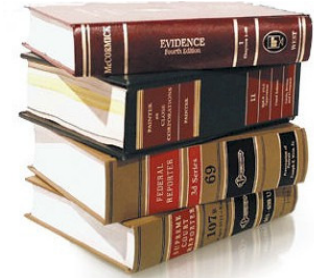


OVERSEAS ABDUCTION

- Get legal advice straight away.
- Contact NSW DoCS and Cth Attorney General's Department.
- Is the relevant country a signatory to the Hague Convention on Child Abduction?
- If not, consider applying for a parenting order in that country.



INTERACTION WITH ADVOS



What if the ADVO is made after the Family Law Parenting Orders are made (section 42):

- Local Court power to change a parenting order:
 - Court can vary, suspend, or revoke an earlier parenting order when making a final ADVO.
 - There must be new material not before the court that made the order.
- Will need to alert police prosecutor or lawyer that there are parenting orders that need to be varied.
- Take a copy of parenting orders to court for any proceedings relating to the ADVO.
- Parenting orders that are inconsistent with an ADVO will **override** the ADVO if Family Law Parenting orders are made **after** an ADVO



WHERE TO GET HELP



Legal Aid NSW: 9219 5000

Early Intervention Unit: 1800 551 589

Law Access: 1300 888 529



WHERE TO GET HELP

Child Abduction/ Urgent Applications

- Family Court of Australia
 - National Contact Centre 13300 352 000 (emergency 24hrs)
- Federal Police Family Law Coordination Centre
 - Airport Watch List Alerts 02 6126 7999

**International Family Law Section
Attorney General's Dept: 1800 100 480**

Passports Office: 131 232

