



When parents disagree on child vaccination

Date: Monday January 31, 2022

E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

On 10 January 2022, the Australian Federal Government confirmed the COVID-19 vaccination rollout program for children aged 5 to 11. Prior to this, children aged 12+ have also been eligible for the COVID-19 vaccination.

Vaccinations, in general, have historically been an area of dispute between parents for years and the COVID-19 vaccine is no different. So, what happens when the parents cannot agree on whether a child should be vaccinated or not?

How does the Court deal with disputes about vaccination?

Disputes relating to vaccinations have been dealt with by the Federal Circuit and Family Court of Australia prior to COVID-19, and such disputes fall within the scope of "parental responsibility". Parental responsibility relates to all duties, powers, responsibilities and authority that parents have in relation to a child. The *Family Law Act 1975* provides that each parent has parental responsibility for a child who is not year 18 unless otherwise ordered by the Court.

Are there parenting orders in place?

Prior to legislative changes to the *Family Law Act* on 6 May 2024, , there may be [parenting orders in place for equal shared parenting responsibility](#) or for one parent to have sole parental responsibility.

If parties have a parenting order for equal shared parental responsibility, it means that both parents must jointly make all long-term decisions relating to a child. Major long-term decisions include but are not limited to, decisions relating to a child's health (which includes vaccinations). This means that a decision to vaccinate a child requires consultation and agreement between the child's parents.

If there is a parenting order for sole parental responsibility, then that parent generally has the authority to make such decisions on their own without consultation with the other parent.

Since 6 May 2024, the Act now adopts the terminology of *'joint decision making on major long-term issues'*.

The Act provides that unless there are Court orders stating otherwise, and if it is safe to do so, parents are encouraged to consult each other about major long-term issues in relation to the child, having regard to the best interests of the child as the paramount consideration.

The new provisions in the Act make it clear that the Court can make orders that decisions are made jointly or that one parent has sole decision-making in relation to all or specified major long-term issues.

If a parenting order provides for joint decision-making in relation to all or specified major long-term issues, then, except to the extent the order otherwise specifies, the order is taken to require each of the persons:

1. to consult each other person in relation to each such decision; and
2. to make a genuine effort to come to a joint decision.

The Act expressly notes that it does not require any other person to establish or verify whether the decision was reached jointly before being acted upon. This means, for example, that third parties, such as healthcare providers, are not obliged to verify the decisions and can assume they were determined jointly.

Using Alternative Dispute Resolution to reach agreement

In circumstances where parents cannot reach an agreement, they are required to attend [Alternative Dispute Resolution](#) to make a further attempt to reach resolution.

If Alternative Dispute Resolution is unsuccessful, an application may be made to the Federal Circuit and Family Court of Australia to determine vaccination of the child.

What happens if the matter proceeds to Court?

If parties cannot reach an agreement, the Federal Circuit and Family Court of Australia may be required to determine the issue.

To date, there have not been any cases in Australia regarding the COVID-19 vaccine specifically, however, the recent case of [Covington v Covington \[2021\] FamCAFC 52](#) (*this case does not relate to the COVID-19 vaccination but rather, another vaccine for*

a child) reaffirmed the Court has authority to make orders with respect to the vaccination of a child, regardless of parental consent.

In making a determination about vaccinations, the paramount consideration of the Court remains the best interests of the child. The Court will make a determination following a review of the particular facts and circumstances of the case along with evidence presented. Accordingly, it is important for the Court to be presented with any evidence from medical professionals regarding any benefits or risks of a vaccination.

In cases of this nature, the Court may grant one parent sole decision-making in relation to making medical decisions (inclusive of vaccinations) or grant sole decision-making for all major long-term decisions concerning the child's wellbeing and care.

Alternatively, the Court may make an order that a child be vaccinated in accordance with the Department of Health's National Immunisation Program Schedule. ([Kaye, Miranda - "Immunisation Disputes in the Family Law System" \[2017\] UTSLRS 28; \(2017\) 31 Australian Journal of Family Law 73](#))

Get help from a family lawyer

If you are in dispute with your partner in relation to vaccination of your child, or any other issue that you have been unable to resolve, our family law team have significant experience with parenting disputes.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.