

Duty of Care and Family Law in Schools



Bani Mishra

Special Counsel



**Cecelia
Irvine-So**

Practice Leader



Agenda

1

Family Law update: May 2024 changes

2

Requests to change terms of enrolment

3

Requests for access to information

4

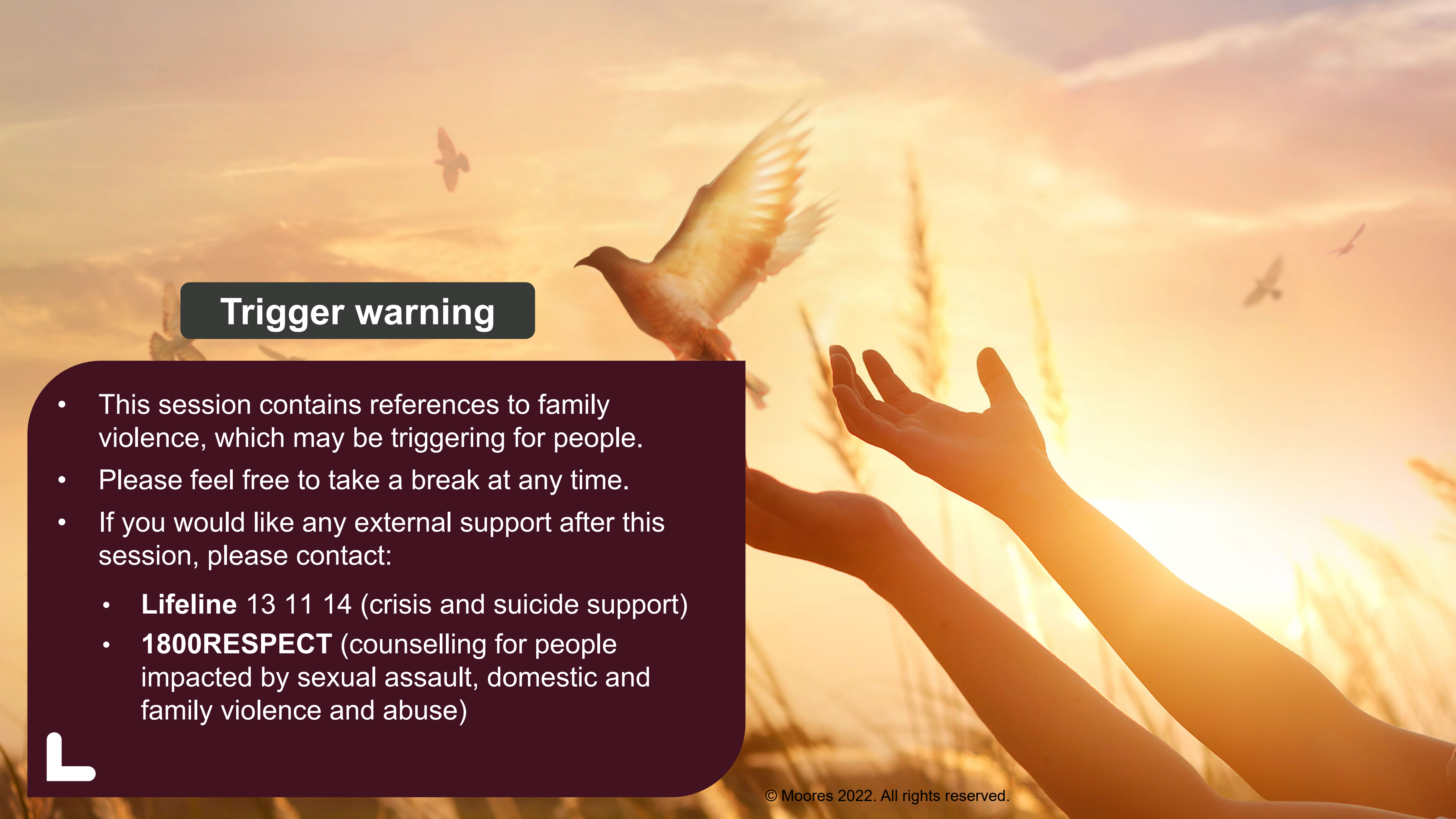
Family Law orders

5

Intervention orders

6

Discharging the school's duty of care



Trigger warning

- This session contains references to family violence, which may be triggering for people.
- Please feel free to take a break at any time.
- If you would like any external support after this session, please contact:
 - **Lifeline** 13 11 14 (crisis and suicide support)
 - **1800RESPECT** (counselling for people impacted by sexual assault, domestic and family violence and abuse)





May 2024 Family Law Changes

- Only apply to Court Orders made on or after 6 May 2024.
- Older orders ARE NOT invalid



s60CA: the
best interests
of the child



s61B: definition
of parental
responsibility



s61C: parental
responsibility
(new amendment
to the Family Law
Act)



Parental Responsibilities

“Parental Responsibility” - all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

- Family Law Act – previously contained a presumption that it is in the best interests of the child for the parents of that child to have equal shared parental responsibility.
- Section 61C(1) now provides that each parent has parental responsibility for their child, subject to any further court order.
- Section 61CA now provides that parents are encouraged to consult each other about major long-term issues, subject to court orders and if it is safe to do so.



Major long-term issues

- The **child's education** (current/future)
- The child's religious/cultural upbringing
- The child's health
- The child's name





What do the Family Law Amendments mean for Schools?

No Court Orders and no safety concerns

- Each parent has parental authority to make decisions for their child.
- Parents are encouraged to consult each other about major long-term issues.

Court Orders

- Do the orders specify joint long-term decision making?
- Do the orders specify sole decision making?

Note: If a parenting order provides for joint long-term decision making, the Family Law Act does not require a school to establish that the parents have consulted the other prior to acting on communication from one parent (s61DAA)



Change of Enrolment

Enrolling or changing a child's enrolment into, or out of a school, is regarded as a major long-term issue.

When can a change of enrolment occur?



By **mutual agreement** of the parents;



Pursuant to a **Court order**, commonly where children are due to elevate from Kinder to Primary School or from Primary to Secondary School;



In line with your **School Policy** on school enrolment; or



In cases of **unforeseen circumstances** such as family violence or other change in circumstances of the parents.



Change of Enrolment - Fees

- Where the Parent provides evidence that Fees are subject to a court order or a private agreement, the School may invoice fee accounts in accordance with the court order or a Child Support Agreement.
- This does not abrogate the Parent's joint and several liability to the School for the Fees (subject to the school's specific payment policies)





Changes to School Enrolment - Fees

- Often upon acceptance at the School of choice both parents/legal guardians/carers are **jointly and severally liable** for payment of all fees and charges in relation to a child enrolled at the School subject, to an enrolment agreement.
- However, there are occasions where **split payments** may be appropriate.
- Enquiries should be made with the parents of the child as to whether the parties have entered into a **Binding Child Support Agreement** which details the obligations of each parent regarding the payment or (portion thereof) the child's school fees.
- Whilst a **Child Support Agreement** is a private agreement between the parties and is NOT binding on the school, this may assist you in securing fees are paid as agreed between the parties as evidenced in the Child Support Agreement.
- If appropriate, it may be advisable that the payment details set out in the parties' Child Support Agreement be transcribed into the relevant **enrolment agreement**.



Requests for access to information

- **Subpoenas** are issued by a court or tribunal to compel a person or organisation to produce documents or give evidence.
- **Timeframes** apply – do not ignore subpoenas or delay responding.
- Can file an objection to comply with a subpoena where:
 - **Welfare** of a child is of real concern
 - **Documents** requested are irrelevant or an abuse of process
 - **Practical difficulty** with complying
 - Request for counselling **notes**





Federal Circuit and Family Court Orders

- Obtain a sealed copy of any court orders
- It is the parents' responsibility to provide orders to the school
- Help!! I have multiple orders stating different things
- These orders look old...
- Orders to attend a school are binding on the parents, not the school



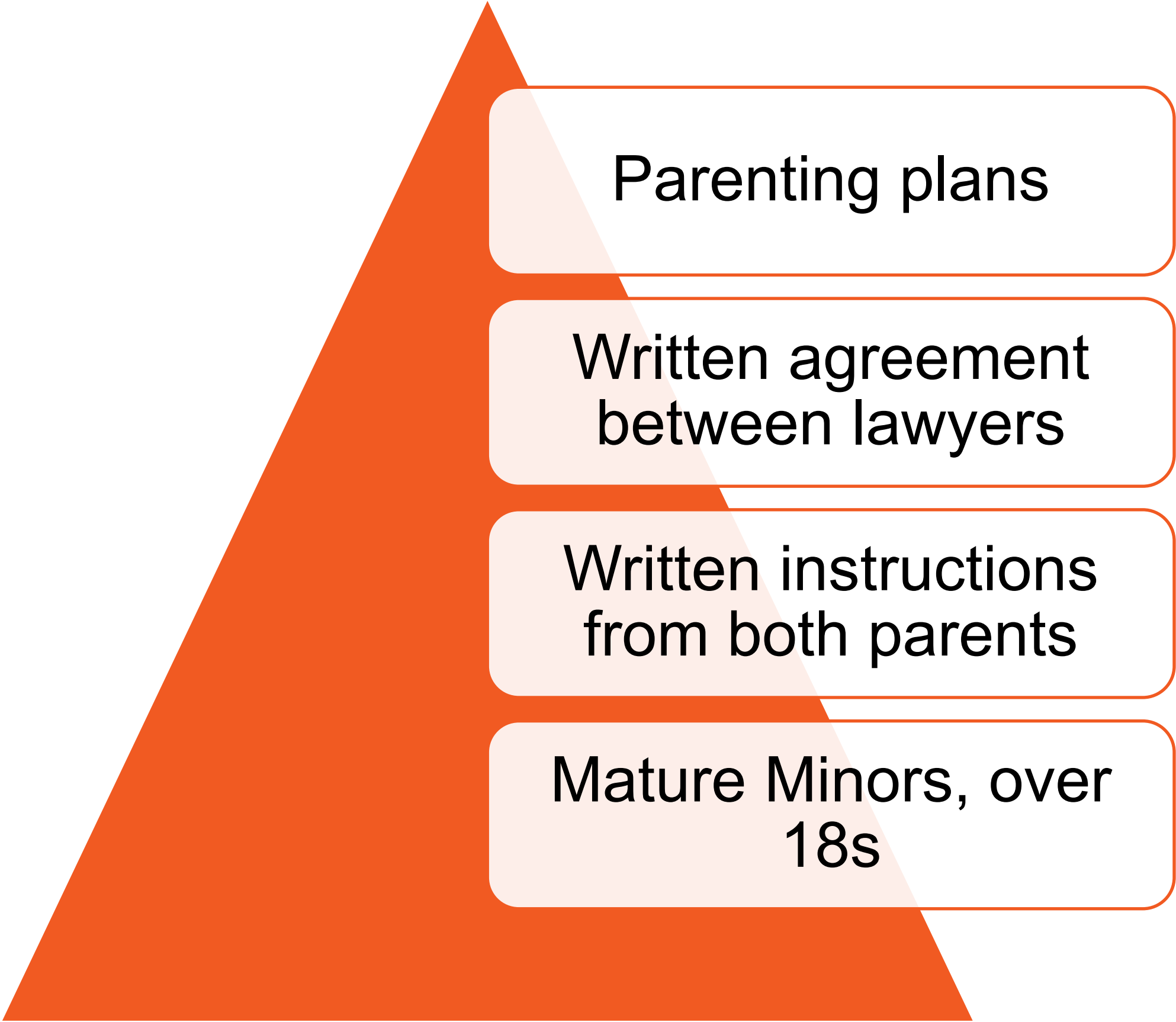


Key matters to look out for in parenting orders





What if there is no court order?





Family violence intervention orders

- Request a **sealed copy** of any court orders.
- The **named person** must act consistently with the order.
- Breaching a family violence intervention order is a crime. Incidents should be reported to **police**.
- Check for **carve outs** in the order to permit parents to act consistently with parenting orders under the *Family Law Act 1975* (Cth) or a written agreement about child arrangements.
- Seek guidance to interpret the interaction between **parenting orders** and **intervention orders**.
- Be mindful of sharing information about parents and students where their family is affected by a **FVIO** (e.g. email addresses, phone numbers and physical location).



Discharging the School's Duty of Care

- If you know that a parent is acting inconsistently with a court order or parenting plan – **stand your ground!**
- When responding to emotionally charged situations: **de-escalate** and remind parents of court orders or parenting plans.
- If the situation starts to feel unsafe, the **safety** of students and staff is paramount. Take the student to a safe place and seek assistance from the leadership team.
- If the situation becomes violent or threatening, don't be afraid to involve **police**.
- **Document** and **report** any incidents
- **Trespass Notices and School Safety Orders**



Scenarios

1. Mum enrolls child Ollie in violin, Dad changes to flute. This happens every few weeks.
2. Student Wenxi's mother has re-married. Can step-dad volunteer at school when father says he objects?
3. Ashwin's parents cannot agree on camp. Father has consented but mother has not. Can Ashwin go on camp?
4. There is an IVO against Dad. Dad wants to:
 - a. Pick up student Alex at school;
 - b. Help at the working bee;
 - c. Go on the father and kids camp;
 - d. Attend the fathers' group wine tasting night



Key takeaways

- The new laws don't change **current arrangements**
- Seek legal advice with respect to **subpoenas**
- Act consistently with the school's **duty of care**
- **Safety** is paramount
- Don't be afraid to contact **police**
- Have both parents sign **enrolment documents** where possible





Questions?



Bani Mishra

Special Counsel

bmishra@moores.com.au
03 9843 0442



Cecelia Irvine-So

Practice Leader

cirvine-so@moores.com.au
03 9843 2121