

## **FAMILY LAW FACT SHEET**

### **Parenting Orders and Shared Parental Responsibility**



*“Parents must consult with each other and share responsibility for major long term issues in regard to the children”*

A Parenting Order specifies where a child is to live, the time they are to spend with each parent and how they can communicate with their parents.

The *Family Law Act 1975* (Cth) states that when making a Parenting Order, the Court must presume that it is in a child’s best interests for separated parents to have equal shared parental responsibility.

This means that parents must consult with each other and share responsibility for decisions about major long term issues in regard to the children.

#### **Major Long Term Issues**

Major long term issues are issues about the care, welfare and development of a child of a long-term nature such as:

- (a) The child’s education (both current and future);
- (b) The child’s religious and cultural upbringing;
- (c) The child’s health;
- (d) The child’s name; and
- (e) Changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with a parent.

The best interests of the child remain the paramount consideration, however, and the presumption of equal shared parental responsibility will not apply in situations of family violence or child abuse.

Where the presumption does apply, the Court must consider the appropriateness of the child spending equal time with both parents. If equal time is not appropriate, the Court must consider whether it is in the best interests of the child to spend substantial and significant time with each parent.

Substantial and significant time requires some time on weekends, holidays and on other days. It must include time in the child’s daily routine and allow the participation at events that are significant to the child and significant to the parent.

## Substantial and Significant Time

In considering whether it is reasonably practicable for a child to spend equal time or substantial and significant time with a parent, the Court will have regard to:

- How far apart the parents live from each other;
- The parent's current and future capacity to implement an arrangement for the child to spend equal time, or substantial and significant time, with each of the parents;
- The parent's current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind;
- The impact and arrangement of that kind that might have an impact on the child; and
- Such other matters as the Court considers relevant.

*“Shared parental responsibility will not apply in situations of family violence or child abuse”*

## The Child's Best Interests

The primary considerations in determining what is in the child's best interests are:

- The benefit to the child of having a meaningful relationship with the parents; and
- The need to protect the child from psychological or physical harm from being subjected to, or exposed to, abuse, neglect or family violence.

In applying these two (2) primary considerations, the Court is to give greater weight to the need to protect the child from harm and from being subjected or exposed to abuse, neglect or family violence.

## Additional Considerations

Additional considerations are as follows:

- Any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are

relevant to the weight it should give to the child's views;

- The nature of the relationship of the child with:
  - Each of the child's parents; and
  - Other persons (including any grandparent or other relative of the child);
- The extent to which each of the child's parents has taken, or failed to take, the opportunity:
  - To participate in making decisions about major long-term issues in relation to the child;
  - To spend time with the child; and
  - To communicate with the child;
- The extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;
- The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
  - Either of his or her parents; or
  - Any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living.
- The practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain

*“The best interests of the child remain the paramount consideration”*

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personal relations and direct contact with both parents on a regular basis;

- The capacity of:
  - Each of the child's parents; and
  - Any other person (including any grandparent or other relative of the child);

to provide for the needs of the child, including emotional and intellectual needs;

- The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;

- If the child is an Aboriginal child or a Torres Strait Islander child:

- The child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

- The likely impact any proposed parenting order under this Part will have on that right;

- The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

- If a family violence order applies, or has applied, to the child or a member of the child's family, any relevant inferences that can be drawn from the order, taking into account the following:

- The nature of the Order;
- The circumstances in which the Order was made;
- Any evidence admitted in proceedings for the Order;
- Any findings made by the Court in, or in proceedings for, the Order; and

*“Additional considerations include any views expressed by the child”*

- Any other relevant matter.
- Whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- Any other fact or circumstance that the court thinks is relevant.

As practitioners and in accordance with our obligations under the *Family Law Act 1975* (Cth), we encourage you to act on the basis that the child's best interests are best met:

- (i) by the child having a meaningful relationship with both of the child's parents; and
- (ii) by the child being protected from psychological or physical harm and from being subjected to, or exposed to, abuse, neglect or family violence.

In applying these considerations, greater weight should be given by you to the need to protect the child from harm, abuse, neglect or family violence.

If you would like to seek clarification on any of the matters outlined above, please do not hesitate to contact our family law team.



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