

PARENTING ORDERS

This information is a brief outline of the relevant provisions of the *Family Law Act 1975*. You should obtain legal advice as to how a decision might be made in your specific circumstances.

The *Family Law Act 1975* provides that the best interests of the child are the paramount consideration¹ in all decisions the court makes. This means that a judge decides for themselves, based on the evidence that they hear and guided by the relevant provisions of the Act, what they think is best.

A judge starts by considering the objects and principles. These talk about the rights that children have. However, these rights are not absolute. A judge can conclude that it is not practicable or that is contrary to a child's best interest for these rights to be practiced. Subject to these considerations, a child's rights are²:

- To have the benefit of both parents being meaningfully involvement in their lives, to the maximum extent consistent with their best interests
- Being protected from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
- To receive adequate and proper parenting
- For parents to fulfil their duties, and meet their responsibilities
- Being cared for by both of their parents
- To spend time and communicate, on a regular basis, with both parents and others (such as grandparents and other relatives)
- For parents to jointly share duties and responsibilities
- To have parents agree about the future parenting of their children
- To enjoy culture (including with other people who share that culture)

These rights are focused on and belong to children. Children have rights and parents have duties and responsibilities. This means, for example, that (subject to it being in a child's best interests that it be so), that children have a right to a relationship with both of their parents and not the other way around. Hence, parents have obligations and responsibilities to promote and encourage those relationships.

¹ Section 60CA

² Section 60B

There is a presumption that parents have equal shared parental responsibility.³ The presumption does not apply if there are reasonable grounds to believe that a parent has abused a child or perpetrated family violence. If a judge believes that it is not in a child's best interests for a child's parents to have equal shared parental responsibility, then the presumption might be rebutted.

If the presumption of equal shared parental responsibility applies, a judge must consider, but is not bound to order, equal or substantial and significant time.⁴ All arrangement must be in a child's best interests and reasonably practical.

In deciding what is in a child's best interests, a judge has two primary considerations:⁵

- The benefit to the child of having a meaningful relationship with both parents
- The need to protect children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.⁶

The need to protect children from abuse, neglect and family violence is prioritised.

A judge additionally considers matters⁷ such as any views expressed by a child, the nature of a child's relationship with each parent, the extent to which each parent has taken, or failed to take, the opportunity to participate in decision making for, practice a relationship with and maintain the child, the likely effect of change and a parent's capacity to provide for the child's needs, (including emotional and intellectual).

No single factor determines any particular outcome, although safety is prioritised throughout. If a relationship cannot be safely practiced, then it probably won't occur. If it is safe for a relationship to occur, then it should be as meaningful as possible.

³ Section 61DA. Section 65DAC provides that parents with equal shared parental responsibility should consult with respect to major issues (section 4 defines these as decisions about education, religious upbringing, names, etc)

⁴ Section 65DAA. Substantial and significant time involves a mix of weekday, weekend and school holiday time and special events and times significant to the parent or the child (eg Christmas, birthdays, significant anniversaries, ANZAC Day for service personnel and veterans)

⁵ Section 60CC

⁶ Section 4AB Family violence is defined as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or causes the family member to be fearful. It need not involve physical violence and includes assaults, sexual assault, stalking, repeated derogatory taunts, intentionally damaging or destroying property, intentionally causing death or injury to an animal, unreasonably denying a person financial autonomy, unreasonably withholding financial support and preventing a person from keeping connections with his or her family, friends or culture.

⁷ Section 60CC(3)