

Road Map to Parenting Matters

Parenting matters are complex and can be highly emotional. It can be difficult for parents to understand the "road followed" when making necessary arrangements for your child.

Legal principles

Most of the time, parenting matters can be resolved by agreement without the need for the court's intervention. However, there are always some matters that will inevitably be subject to litigation.

Part VII of the Family Law Act 1975 ("the Act") applies to parenting matters. The paramount consideration of the court is what is in the best interests of the child. At the beginning of each parenting matter it is necessary to first consider each parent's proposal, the issues in dispute, and the agreed facts.

Section 60CC of the Act then outlines the factors that the court must take into account when deciding what exactly is in the child's best interests. The primary considerations to be taken into account are:

1. the benefit to the child of having a meaningful relationship with both of the child's parents; and
2. the need to protect the child from physical or psychological harm from being subject to, or exposed to, abuse, neglect, or family violence.

The courts are required to give greater weight to the need to protect the child from harm.

Next, the court will consider the 14 additional factors within section 60CC(3), although not all factors will necessarily apply to every case. These factors are:

- any views expressed by a child, subject to other factors such as their maturity or level of understanding;
- the nature of the child's relationship with each of their parents and other persons, such as grandparents;
- the extent to which each parent has participated in decisions to be made for a child, the time they have spent with them, and the level of communication with their child;

- the extent to which each parent has fulfilled, or failed to fulfill, their obligations as parents;
- the likely effect of any changes in the child's circumstances, such as the likely effect of any separation from a parent or relative, such as a sibling;
- the practical difficulty and expense relating to time between a child and their parents, and whether this expense substantially affects the child's right to maintain personal relations and contact with both parents;
- the capacity of each parent to provide for their child's needs, including emotional and intellectual;
- the maturity, sex, and lifestyle (including culture) of the child and either parent;
- if the child is an Aboriginal or Torres Strait Islander, whether the child has a right to enjoy his or her culture and the likely impact of a parenting order on that right to enjoy such culture;
- each parent's attitude to the child and the responsibilities of parenthood;
- any family violence;
- if a family violence order applies or has applied to a child or member of the child's family, what is the nature of the order, circumstances in which it was made, any evidence admitted in the proceedings, or findings in relation to the evidence;
- is it preferable to make an order which is less likely to lead to further proceedings; and
- any other fact or circumstance that the court considers relevant.

Co-parenting

There is a presumption of equal shared parental responsibility under section 61DA of the Act. This responsibility requires parents to make decisions together about the long-term care for a child, including medical treatment, counselling for a child, education, and religious and cultural decisions.

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Once the court has considered if the presumption of equal parental responsibility exists, it must consider making an order for equal time between the child and each parent. If this is not in the child's best interests, then the next consideration is if "substantial or significant" time with each parent is in the child's best interests. Section 65DAA(3) provides a guide as to what substantial or significant time includes, and specifically if:

1. time occurs:
 - a. on days that fall on weekends and holidays; and
 - b. days that do not fall on weekends and holidays; and
2. time between the child and the parent allows the parent to be involved in:
 - a. the child's daily routine; and
 - b. occasions and events that are of particular significance to the child; and
3. time allows the child to be involved in occasions and events that are of particular significance to the parent.

When neither equal time nor substantial or significant time are within the child's best interests, then a court can make the parents agree (by consent) to an order that outlines specific times shared between a child and a parent.

Obligations created by parenting orders

When a parenting order is in place, certain obligations will be imposed on parents. For instance, the other parent mustn't act contrary to the order to:

- remove the child from the care of a person;

- refuse or fail to deliver or return the child to a person;
- interfere with the exercise or performance of any of the powers, duties, or responsibilities that a person has under the order;
- hinder or prevent a person and the child from spending time together in accordance with the order; and
- interfere with a person and the child benefiting from spending time with each other under the order.

Where equal shared parental responsibility exists under an order, it will be necessary for both parents to jointly make decisions about the child's long term care and welfare. Therefore, it is not acceptable for one parent to unilaterally make a decision for the child. Where parties cannot agree on a decision, a parenting order can also include the provision of a process for resolving disputes about the operation of the orders through family dispute resolution (FDR). Where FDR fails, an application to the Court will need to be made for a judge to make the decision in the parent's shoes.

Expert evidence

A family report writer can be appointed by consent between the parties or by an order by the court to prepare an expert report. The court will then decide on the use of the subsequent report. Where a document or report is not prepared pursuant to joint instructions from both parties, a judge will use their discretion about the usefulness of it.

Still have questions? Call our team on 1300 045 750.

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