

Family Law Factsheet No. 6 Children and Parenting



The law encourages parents to reach their own agreement in relation to the arrangements made for children after separation. Sometimes, this is not possible, particularly if you or your child have experienced family violence, you are seeking urgent orders, or your child is at risk.

This factsheet outlines what the court considers when determining a parenting dispute.

What parenting orders can I seek from a court?

The court can make orders in relation to the following matters:

- parental responsibility
- where a child will live
- the time a parent is to spend with a child
- the time a parent may communicate with a child by telephone, skype, face time, letter and email
- specific issues relating to a child such as what school a child attends, and whether a passport can be obtained for a child.

Who can seek a parenting order?

A parenting order can be sought by a parent of the child, the child in their own right, or any person concerned with the care, welfare and development of a child, including grandparents and step parents.

What is parental responsibility?

Parental responsibility is who makes decisions for the children relating to their welfare. Both parents have equal shared parental responsibility unless this is changed by a court. This means that both parents have a say in important decisions affecting their children. This includes:

- the school a child will attend
- whether a child should undergo a medical procedure
- the religious upbringing of a child
- whether a child's name can be changed
- whether a parent can relocate with a child; for example, moving to another state or country.

Equal shared parental responsibility **does not mean** that a child will live equally with both parents.

Can I seek sole parental responsibility?

Yes. A court will consider making an order for sole parental responsibility if it is in the best interests of a child. This can include the following circumstances:

- there has been a history of family violence
- a child is at risk of harm
- a parent has a mental health concern that impacts their ability to make decisions
- the parents are unable to communicate.

What does the court consider when making a parenting order?

The most important consideration is what is in the best interests of a child.

Step 1

A court must start with the presumption that both parents should have equal shared parental responsibility.

The court does not have to apply the presumption if a parent has experienced family violence.

Step 2

If a court applies the presumption of equal shared parental responsibility, it must consider whether it is in the best interests of a child to spend equal time with each parent.

The court will consider the practical arrangements of an equal time arrangement such as the distance between each parent's residence, their working commitments, the children's schooling and whether the parents can communicate effectively.

Step 3

If the court does not consider it in the best interests of children to spend equal time with each parent, it must consider whether it is in the best interests of a child to spend significant and substantial time with each parent.

Significant and substantial time includes weekdays, weekends, special occasions and holidays.

Again the court must consider the practical arrangements of a significant and substantial time arrangement.

Step 4

If the court does not consider it in the best interests of a child to spend significant and substantial time with a parent, then it makes an order it considers to be in the best interests of a child.

Can the court make an order that the other parent spend no time with a child?

A court may make an order that a parent spend no time with a child if it considers that the child will be exposed to an unacceptable risk of harm.

Can the court make an order that the other parent spend supervised time with a child?

A court may make an order that a parent spend supervised time with a child if it considers that the child may be at risk of harm.

An order for supervision is made on a temporary basis only.

A court will not make a final parenting order that requires ongoing supervision of a child.

The best interests of children

When a court considers the best interests of children, the court looks at primary considerations and secondary considerations.

There are two primary considerations:

1. The benefit of a child having a relationship with both parents, and
2. The need to protect a child from risk of harm.

There are a number of secondary considerations which include:

- the views expressed by a child
- the child's relationship with each parent and any other person such as a sibling or grandparent.
- whether a person has been involved as a parent
- if the child is an Aboriginal or Torres Strait Islander child, the right of the child to experience culture and share it with people of that culture
- any family violence involving the child or a member of the child's family.

How does the court consider the views of a child?

The court can appoint an Independent Children's Lawyer for a child. This lawyer may speak to a child about their views but does not have to recommend parenting orders that are consistent with those views.

The court will order the preparation of a family report. A family report is a written document prepared by a family consultant or child psychiatrist appointed by the court. The document outlines the issues that are to be determined by a court and their assessment of those issues. The family report will outline recommendations regarding the arrangements to be made for children.

The court is not bound by those recommendations.

Where else can I obtain information?

The Family Court of Australia website has additional information that may assist you:
www.familycourt.gov.au

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This factsheet is not a substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre







