

## PARENTING ARRANGEMENTS - THE BEST INTERESTS OF THE CHILDREN

From one household to two! What arrangements are appropriate for your children after separation? Below is a simplistic overview of the legal principles applied in all parenting matters.

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| <p><b>Step 1</b><br/>Issues agreed v Issues in dispute</p>   | <ul style="list-style-type: none"> <li>• Think about your parenting proposal</li> <li>• Consider the other parties' proposal</li> <li>• Identify the agreed issues</li> <li>• Identify the issues in dispute</li> <li>• Eliminate as many issues as possible and document the agreement</li> </ul>  |
| <p><b>Step 2</b><br/>Best Interests – section 60CC</p>   | <p>Consider <b>firstly</b> the primary considerations</p> <ul style="list-style-type: none"> <li>• the benefit to the child having a meaningful relationship with both parents; and</li> <li>• the need to protect a child against harm, abuse, neglect or family violence</li> </ul> <p><b>Secondly</b>, consider the 14 'additional' considerations (see over the page)</p> |
| <p><b>Step 3</b><br/>Consider whether the presumption of Equal Shared Parental Responsibility exists</p> | <p><i>What is 'equal shared parental responsibility'?</i></p> <p>It is a presumption that exists under the Family Law Act that requires parents to make decisions <b>together</b> about major issues affecting their children. For example, the choice of school for your child or is psychological therapy necessary?</p>  |
| <p><b>Step 4</b><br/>Equal Shared Parental Responsibility <b>exists</b></p>                              | <ul style="list-style-type: none"> <li>• The court must consider whether an order for equal time between the parents is in your child's best interests and is it reasonably practicable. If it not, then;</li> <li>• is an order for substantial and significant time in the children's best interests and is it reasonably practicable</li> </ul>                            |
| <p><b>Step 5</b><br/>Equal Shared Parental Responsibility <b>does not exist</b></p>                      | <p>Consider an alternative arrangement that is in your child's best interests having regard to the factors in section 60CC</p>  |
| <p><b>Step 6</b><br/>Are there issues still in dispute?</p>  | <ul style="list-style-type: none"> <li>• Assess your evidence</li> <li>• Assess the other parties' evidence</li> <li>• Reassess the proposals made having regard to the relevant 'additional' considerations in step 2</li> <li>• Determine whether your proposal is inline with the children's best interests</li> </ul>   |

Not all parenting matters are the same. The needs of children are not the same. Nevertheless, the legal principles are the same and the best interest principle remains paramount.

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### ***Equal time – it's not alternate weekends?***

Equal time or shared care can be modified to suit your families' routine and your children's needs. Each family is different and the equal time arrangement can take many forms. For example, week about arrangement (Friday to Friday) or the fortnight may be divided (4 nights, 3 nights, 4 nights and 3 nights). This latter arrangement may suit younger aged children. At Parry Coates Family Law, we encourage our client's to start with a weekend for each parent and add nights thereafter, allowing children 'down time' with each parent in addition to the responsibilities of a busy school/work week, organising school lunches, helping with homework and dealing with the chaos of juggling after school activities, organising dinner and bedtimes.

### ***What is substantial and significant time?***

It is substantial and significant time only if:-

(a) time occurs:

- on days that fall on weekends and holidays; and
- days that do not fall on weekends or holidays; and

(b) the time between the child and the parent allows the parent to be involved in:

- (i) the child's daily routine; and
- (ii) occasions and events that are of particular significant to the child; and

(c) the time allows the child to be involved in occasions and events that are of particular significant to the parent.

If neither equal time or substantial and significant time is in a child's best interest, the Court has the discretion and power to make an order that provides for alternative parenting arrangements between a child and a parent.

### **Additional considerations – section 60CC(3)**

In summary, these considerations include:-

- 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;
- 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 or children;
- Extent to which each parent has fulfilled, or failed to fulfil their obligations as parents;
- Likely effect of any changes in the child's circumstances, such as likely effect of any separation from a parent or relative, such as a sibling;
- 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;
- Capacity of each parent to provide for their child's needs, including emotional and intellectual;
- 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 the court considers relevant.

We look forward to hearing from you to discuss the above legal principles relating to your parenting matter or other family law concerns.



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