



This Plain English Guide sets out some of the key provisions of the Family Law Act as it relates to children and what the Court will take into consideration when determining what arrangements should be made and who will have responsibility for the children.

What are the objectives of the law relating to children?

The part of the Family Law Act that relates to children aims to ensure that the best interests of children are met by:

- Ensuring that children have the benefit of both their parents having meaningful involvement in their lives, to the extent that this is consistent with their best interests;
- Protecting children from physical or psychological harm;
- Ensuring that children receive adequate and proper parenting to help them achieve their full potential; and,
- Ensuring that parents fulfill their duties and meet their responsibilities towards their children.

The principles underlying these objectives are that:

- Children have the right to know and be cared for by both their parents;
- Children have a right to spend time on a regular basis with both their parents;
- Parents jointly share duties and responsibilities for their children;
- Parents should agree about the future parenting of their children; and,
- Children have a right to enjoy their culture.

The Court makes orders with these objectives in mind.

How does a court make a decision about children?

A court must regard the best interests of the child as the paramount consideration when dealing with any application for a parenting order. The primary considerations for the Court in deciding what is in a child's best interests are:

- The benefit to the child of having a meaningful relationship with both parents; and,
- The need to protect the child from physical or psychological harm.

Additional considerations for the Court are:

- Any views expressed by the child;
- The nature of the child's relationship with each parent;
- The willingness of each parent to encourage a relationship between the child and the other parent;
- The likely effect of any change in the child's circumstances;
- The practical difficulties and expense of a child spending time and communicating with a parent;
- The capacity of each parent to provide for the child's needs;
- The maturity, sex, lifestyle and background of the child and the parents;



- The attitude to the child and the responsibilities of parenthood demonstrated by each of the child's parents; and,
- Any family violence involving the child or a member of the child's family.

A court is also required to consider the extent to which each parent has fulfilled his or her responsibilities as a parent in the past.

How does a court make a decision about children?

A court can find out about the views of a child by reading a report prepared for the Court by a family consultant or other expert or by making an order appointing an independent children's lawyer. In some circumstances a judge may interview a child, though this is unusual.

Are there any prerequisites before court proceedings can be commenced?

Parents are expected to participate in family dispute resolution before applying to a court for orders concerning their children. The Government is establishing Family Relationships Centres which will offer family dispute resolution. Family dispute resolution is also provided by other agencies. Parents are not required to participate in a family dispute resolution if there has been abuse of a child by one of the parents or if there has been family violence.

What sort of orders can a court make about children?

A court can make orders about:

- Parental responsibility;
- Which parent a child lives with;
- How much time a child spends with the other parent; and,
- How a child communicates with a parent.

What is parental responsibility?

Parental responsibility means all the duties, powers, responsibilities and authority which parents have in relation to their children. Unless a court makes an order to the contrary, each of the parents of a child has parental responsibility for the child. A court can make orders about parental responsibility in general terms and in relation to specific issues. For example, a court may give one parent sole parental responsibility for decisions concerning a child's education.

The law provides that a court must apply a presumption that it is in the best interests of a child for the child's parents to have equal shared parental responsibility for the child. The presumption does not apply, however, if there are reasonable grounds to believe that a parent of the child has abused the child or has engaged in family violence. If there is an order for equal shared parental responsibility then the parents must consult with each other in relation to decisions about major long term issues affecting the child, such as education, religious upbringing and major medical treatment.



Do children have to spend equal time with each parent?

Contrary to popular belief, the law does not provide that children must spend equal time with each parent. If a court makes an order that a child's parents are to have equal shared parental responsibility for the child, then the Court must consider whether it would be in the interests of the child and reasonably practicable for the child to spend equal time with each parent. The Court must make its decision based on what is best for the child and having regard to the particular circumstances of the child. If the Court does not make an order for equal shared parental responsibility then it does not have to consider ordering that the child spend equal time with each parent.

Who may apply for a parenting order?

An application for a parenting order may be made by either of the child's parents, the child, a grandparent of the child or any other person concerned with the welfare and development of the child.

What happens if we go to Court?

The amendments to the Family Law Act introduce new principles which apply to court proceedings concerning children.

Those principles are:

- The Court must consider the needs of the child and the impact of the proceedings on the child;
- The Court is to actively direct, control and manage the proceedings;
- The proceedings are to be conducted in a way that will safeguard the child against family violence, child abuse and child neglect, and safeguard the parties to the proceedings against family violence;
- The proceedings are to be conducted in a way that will promote cooperative and child focused parenting; and,
- The proceedings are to be conducted without undue delay and with as little formality as possible.

The Court will usually appoint a family consultant to assist and advise parties to the proceedings and to prepare a report which will form part of the evidence that the Court considers. A family consultant is normally a qualified psychologist or social worker.

How can Mills Oakley help you?

- We can advise you how the laws relating to parenting apply to you.
- We can refer you to agencies which offer family dispute resolution.
- We can represent you in negotiations and help you to reach agreement about parenting issues with your former partner.

If you would like to discuss any aspect of this Plain English Guide, please do not hesitate to contact us.



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