

## Family Law Fact Sheet

### Pathway for deciding parenting matters

**The best interests of the child is the paramount consideration**

Does the presumption of equal shared [parental responsibility](#) apply?

**No**

There are reasonable grounds to believe a parent of the child (or a person who lives with a parent of the child) has engaged in [abuse](#) of the child or [family violence](#) or

When the Court is making an interim order the Court considers it inappropriate for the presumption to apply or

There is evidence that it would not be in the [best interests](#) of the child for the child's parents to have equal shared [parental responsibility](#)

A Court must have regard to the [best interests](#) of the child in making such Parenting Order as it considers appropriate

**Yes**

There is no reasonable finding of [abuse](#) of the child or [family violence](#) (or there is evidence that it would be in the best interests of the child to have equal shared [parental responsibility](#))

Parents must jointly make decisions about any [major long-term issues](#) for the child

Is it in the best interests and [reasonably practicable](#) for the child to spend equal time with each of the parents?

**No**

Is it in the best interests and [reasonably practicable](#) for the child to spend [substantial and significant time](#) with each of the parents

**No**

A Court must consider making an Order for the child to spend [substantial and significant time](#) with each of the parents

**Yes**

**Yes**

A Court must consider making an Order for the child to spend equal time with each of the parents and if equal time is not ordered, the Court must consider whether the child spends [substantial and significant time](#) with each of the parents

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## Definitions

**Best interests of a child** – the Court must consider the primary and additional considerations which are as follows:-

*Primary considerations* 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 subjected to or exposed to abuse, neglect or family violence.

*Additional considerations* are:

1. Any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant to the weight it should give to the child's views.
2. The nature of the relationship of the child with:
  - (a) Each of the child's parents; and
  - (b) Other persons (including any grandparent or other relative of the child).
3. The willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent.
4. The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
  - (a) Either of his or her parents; or
  - (b) Any other child or other person (including any grandparent or other relative of the child) with whom he or she has been living.
5. The practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis.
6. The capacity of:
  - (a) Each of the child's parents; and
  - (b) Any other person (including any grandparent or other relative of the child);to provide for the need of the child, including emotional and intellectual needs.
7. The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents and any other characteristics of the child that the Court thinks are relevant.
8. If the child is an Aboriginal or Torres Strait Islander child:
  - (a) The child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
  - (b) The likely impact any proposed Parenting Order under this Part will have on that right.
9. The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents.
10. Any family violence including the child or a member of the child's family.
11. Any family violence Order that applies to the child or a member of the child's family, if:
  - (a) The Order is a Final Order; or
  - (b) The making of the Order was contested by a person.
12. Whether it would be preferable to make the Order that would be least likely to lead to the institution of further proceedings in relation to the child.
13. Any other fact or circumstance the Court thinks is relevant.
14. Without the limiting paragraphs 3 and 8(a) above, the Court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil his or her responsibilities as a parent and in particular, the extent to which each of the child's parents:
  - (a) Has taken, or failed to take the opportunity:
    - (i) To participate in making decisions about major long-term issues in relation to the child;
    - (ii) To spend time with the child;
    - (iii) To communicate with the child;
  - (b) Has facilitated, or failed to facilitate the other parent:
    - (i) Participating in making decisions about major long-term issues in relation to the child;
    - (ii) Spending time with the child;
    - (iii) Communicating with the child; and
  - (c) Has failed, or failed to fulfil the parent's obligations to maintain the child.

## Definitions

**Abuse** – in relation to a child means:

1. An assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs;
2. A person involving a child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first mentioned-person.

**Family Violence** – means conduct, whether actual or threatened by a person towards, or towards the property of, the person's family that causes that or any other member of the person's family reasonable to fear for or reasonable to be apprehensive about his or her personal wellbeing or safety.

**Major long-term issues** – in relation to a child, means issues about the care, welfare and development of the child of a long-term nature and includes (but is not limited to) issues of that nature about:

1. The child's education (both current and future);
2. The child's religious and cultural upbringing;
3. The child's health;
4. The child's name; and
5. Changes to the child's living arrangements that make it significantly more difficult for the child to spend time with the parent.

To avoid doubt, a decision by a parent of the child to form a relationship with a new partner is not, of itself, a major long-term issue in relation to the child. However the decision will involve a major long-term issue if, for example, the relationship with the new partner involves the parent moving to another area and the move will make it significantly more difficult for the child to spend time with the other parent.

**Parental responsibility** – in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

**Reasonable practicality** – in determining whether it is reasonably practicable for a child to spend equal time or substantial and significant time with each of the child's parents, the Court must have regard to:

1. How far apart the parents live from each other;
2. The parents' current and future capacity to implement an arrangement for the child spending equal time or substantial and significant time with each of the parents;
3. The parents' current and future capacity to communicate with each other and resolve difficulties that might arise and implementing an arrangement of that kind; and
4. Such other matters as the Court considers relevant.

**Substantial and significant time** – a child will be taken to spend this time with a parent only if the time the child spends with the parent includes both:

1. Days that fall on weekends and holidays;
2. Days that do not fall on weekends or holidays;
3. The time the child spends with the parent allows the parent to be involved in:
  - (a) The child's daily routine;
  - (b) Occasions and events that are of particular significance to the child; and
  - (c) The time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.