



Registered TM 1227576

Dean R. Love & Associates

Barristers & Solicitors
DRL Legal Pty Ltd (ACN 123 034 846)

FAMILY LAW – CIVIL LAW – CRIMINAL LAW

ABN 34 123 034 846

Perth Office:
1st Floor, 231 Adelaide Terrace
PERTH WA 6000

Postal:
PO Box 3263
PERTH WA 6832

Tel: (08) 9218 9993
Fx: (08) 9218 9557
enquiries@drlegal.com.au
www.drlegal.com.au

SHARED PARENTAL RESPONSIBILITY

Since 1 July 2006, the Family Law Act 1975 (“the Act”) introduced a new phrase of “Shared Parental Responsibility” for children’s matters.

Since then there have been many misconceptions about what this means, and in particular, the belief that parents are now automatically entitled to equal shared time with their children. Please note this is not the intention of the Act. It solely relates to the allocation of parental responsibility for a child. It does not decide anything about the amount of time the child spends with each parent. The purpose of this letter is to make it as clear as possible what the phrase “**Shared Parental Responsibility**” means to you.

Section 61 B provides us with the meaning of parental responsibility:

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

In most cases, the court must also consider the extent to which each parent 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 and;
 - (iii) To communicate with the child.

- (b) has facilitated, or failed to facilitate, the other parent in:
 - (i) Participating in making decisions about major long-term issues in relation to the child;

- (ii) Spending time with the child and;
 - (iii) Communicating with the child.
- (c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.

When the child's parents have separated, the court must, in applying the provisions above, have regard in particular, to events that have happened and circumstances that have existed since the separation occurred (s60CC(4A)).

Shared Parental Responsibility

When making a parenting order in relation to a child, the court must apply the presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child (s61DA(a)).

However, the presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

- (a) Abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or
- (b) Family violence (s61DA(2)).

When the court makes an Interim Order, the above presumption applies, unless the court considers that there are reasons why it would not be appropriate in the particular circumstances of the case (s61DA(3)).

The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child (s61DA(4)).

Equal Time

Section 65DAA provides the court with some guidelines to consider whether a child should be spending equal time or substantial and significant time with each parent in certain circumstances.

Section 65DAA(1) provides as follows:

“If parenting orders provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:

- (a) Consider whether the child spending equal time with each of the parents would be in the *best interests of the child*;
- (b) Consider whether the child spending equal time with each of the parents is *reasonably practicable* and;
- (c) If it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.”

Substantial and significant time

Section 65 DAA (2) provides as follows:

“If:

- (a) A parenting order provides (or is to provide) that a child’s parents are to have equal shared parental responsibility for the child;
- (b) The court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents;
- (c) Consider whether the child spending substantial and significant time with each of the parents would be in the best interest of the child;
- (d) Consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
- (e) If it is, consider making an order to provide (or include a provision in the order) for the child to spend substantial and significant time with each of the parents.”

Section 65 DAA (3) explains what is regarded as substantial and significant time:

“...a child will be taken to spend *substantial and significant time* with a parent only if:

- (a) The time the child spends with the parent includes both:
 - (i) Days that fall on weekends and holidays; and
 - (ii) Days that do not fall on weekends or holidays.
- (b) The time the child spends with the parent allows the parent to be involved in:
 - (i) The child’s daily routine; and
 - (ii) The occasions and events that are of particular significance to the child.
- (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.”

Reasonable Practicality

In order to determine what is “reasonable practicality” s65DAA(5) provides some guidelines for the court:

“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:

- (a) How far apart the parents live from each other;
- (b) 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;
- (c) The parents’ current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind;
- (d) The impact that an arrangement of that kind would have on the child; and
- (e) Such other matters as the court considers relevant.”

The court may also take into account a parent’s behaviour as this is relevant for paragraph (c) above.

These include:

- (a) 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 (paragraph 60CC(3)(c));
- (b) The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child’s parents (paragraph 60CC(3)(i)).

We hope this has been helpful and that you are better informed as to the meaning of the phrase “Shared Parental Responsibility”. Obviously, every case is different, and it is a matter for the Family Court as to how these provisions will be applied to your case.