



Children Matters and The Family Court

The Family Law Act stipulates the best interests of the child as the most important consideration when deciding on a child's living arrangements when parents separate.

When making a Parenting Order in relation to a child, the Family Court will apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parenting responsibility for the child.

Equal shared parental responsibility is different to equal parenting time, which refers to the time which children spend with each parent. Equal shared parenting means both parents have a say in making major long-term decisions about the children. Such major long term decisions would usually include medical issues, the type of education a child is to receive, and religious and cultural matters. Day-to-day decisions, such as what clothes the children wear or what they have for breakfast, are not categorized as major long-term decisions.

Often when parents separate, the most difficult problem to resolve is determining how much time a child should spend with each parent. The court assesses whether it is practical and in the best interests of the children for them to spend equal time or 'substantial and significant time' with each parent. It is usually seen as beneficial for both parents to

have a meaningful involvement in the different aspects of their children's lives during the week, on weekends, on holidays and on special occasions.

There is no defined age when the law allows children to decide which parent they would like to live with or spend time with. A Court will take into account a child's wishes but there is no obligation on a Court to follow those wishes in reaching a decision concerning that child. When making parenting orders, the Court does not usually hear directly from children. However, a child's views can be brought to the attention of a Court through an Independent Children's Lawyer or through a Family Report prepared by a Family Consultant such as a Psychologist. A Family Report may be ordered by the Court to assist the Judge better understand the issues in dispute, and the family relationships generally, with the assistance of a child-focused professional. The role of an Independent Children's Lawyer is to represent the child's interests in a case and to assist the Judge in deciding what arrangements are in the child's best interests. The Independent Children's Lawyer does not "take instructions"

from the child but is bound to ensure that the child's views are put before the Court.

Resolving Disputes about Children

Save under exceptional circumstances, the Family Law Act requires you to make an attempt to resolve disputes about parenting matters using Family Dispute Resolution Services before applying to a court for a Parenting Order. If you fail to reach agreement about the future arrangements for your children, then you will need a lawyer to prepare a Court Application on your behalf. The Court Process will still enable you to resolve your dispute using court assisted mediation and further negotiations, but if this fails a Judge will ultimately decide what is best for your children after considering all of the evidence at a Final Hearing.

If you have a Children's Matter and want to receive the best possible outcome for your child or children, you need to seek expert advice.

Please call Glenn Shipway, Natalie Lovett or Rebecca Perry on 07 4662 2033 for more information, or email them on info@carwin.com.au.