

What does parental responsibility mean?

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The concept of “parental responsibility” is common to family law parenting disputes, however, there is often confusion surrounding what it means. Following widespread reforms of the Family Law System in 2006, the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) introduced the concept of “parental responsibility”.

The *Family Law Act 1975* (Cth) (“**theAct**”) defines “parental responsibility” as:

‘In relation to a child, all the duties, power, responsibilities and authority which, by law, parents have in relation to children.’

Notably, the definition of parental responsibility makes no mention of time spent with a child.

For the avoidance of doubt, parental responsibility and time spent with the children have no direct relationship. You can read more about parenting orders in a recent article here.

The definition of parental responsibility

The Act goes further to say that each parent automatically has parental responsibility:

> *Each of the parents of a child who is not 18 has parental responsibility for the child.*
>
> *Subsection (1) has effect despite any changes in the nature of the relationship of the child’s parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.*

Subsection (1) has effect subject to any order of the court for the time being in force (whether or not made under the Act and whether made before or after the commencement of this section).

Essentially, at the birth of a child (regardless of whether the parents are separated or not), both parents naturally have parental responsibility for the child. Parental responsibility will exist until either the child attains 18 years of age, or an order of the court is made, displacing parental responsibility.

Most markedly, after coining this concept of parental responsibility, the 2006 reforms and amendments to the Act then created the presumption of "equal shared parental responsibility" when making parenting orders in respect of children.

What is equal shared parental responsibility?

The presumption of equal shared parental responsibility does **not** mean that there is a presumption of equal time. These are two separate concepts.

The 'automatic' presumption of equal shared parental responsibility is enshrined in the Act, which sets out:

> *When making a parenting order in relation to a child, the court must apply a 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.*
>
> *Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).*

This means that establishing equal shared parental responsibility is the starting point.

If the presumption of equal shared parental responsibility applies (i.e. it has not been displaced), the Act sets out how equal shared parental responsibility is to be exercised.

In a nutshell, where parents have equal shared responsibility, they must make decisions about any major long-term issues in relation to the child jointly. This requires them to:

consult with the other person in relation to the decision to be made about that issue; and

make a genuine effort to come to a joint decision about that issue.

It must be noted that parents are only required to make joint decisions about "major long-term issues" in relation to a child. Every

single decision about a child does not need to be made jointly.

What are considered to be major long-term issues regarding a child?

Major long-term issues are defined in the Act:

> ”*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:*
>
> *the child’s education (both current and future);*
>
> *the child’s religious and cultural upbringing;*
>
> *the child’s health;*
>
> *the child’s name; and*
>
> *changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with a parent.*
>
> *To avoid doubt, a decision by a parent of a 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.”*

The Act goes on to set out that decisions about issues that are **not** major long-term issues are made by the person with whom the child is spending time without a need to consult the other person. This includes short-term decisions made during the child’s day-to-day life, such as what the child is to wear and eat.

For a child under the age of 18 years, the presumption of equal shared parental responsibility can only be displaced by an explicit order of the court.

What is the alternative to equal shared parental responsibility?

Although there is a presumption of equal shared parental responsibility, this can be displaced by a court.

The Act sets out the circumstances where the presumption of equal shared parental responsibility can be displaced:

> *1. 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:*

- *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*

family violence.

> *2. When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.*

> *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.*

What happens if equal shared parental responsibility is displaced by the court?

If the presumption of equal shared parental responsibility is displaced, sole parental responsibility is the alternative to equal shared parental responsibility. This means one parent adopts full parental responsibility for a child and can make long-term decisions for a child solely, without input from the other parent.

Orders for sole parental responsibility are only made if it is in the best interests of the child to do so.

However, it must be noted that sole parental responsibility and equal shared parental responsibility are not the only two alternatives. In some cases, a parent may have sole parental responsibility for one specific long-term major issue, with the balance of major long-term decisions having to be made by both parents equally.

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