



# Parenting orders for spending time with the children

**Date: Monday March 2, 2020**

[Parenting orders can cover a whole raft of family law matters relevant to children](#); for example, [parental responsibility](#). However, today we will be exploring the legislative framework for making parenting orders in respect of the time a child spends with each parent or with other significant people in their lives, such as grandparents.

The *Family Law Act 1975* (Cth) ("**the Act**") sets out a legislative framework for making "time orders".

## Step one – Is there a presumption of equal shared time?

The first step is to consider whether the presumption for equal shared time applies. If a parenting order provides (or is to provide) that a child's parents are to have "equal shared parental responsibility" for the child, the court must:

consider whether the child spending equal time with each of the parents would be in the best interests of the child; and

consider whether the child is spending equal time with each of the parents is reasonably practicable; and if both of the above apply, 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.

## Step two – What if equal shared time does not apply?

If the presumption of equal shared time does not apply, step two is to consider whether "substantial and significant time" is the child's best interest and is reasonably practicable. The Act says that if:

a parenting order provides (or is to provide) that a child's parents are to have "equal shared parental responsibility" for the child; and

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;

the court must:

consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and

consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and if both of the above apply, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.

If substantial and significant times is **not** in the best interest of the child and reasonably practicable, **step three** is to consider what orders are in the best interests of the child and are reasonably practicable.

## What does “substantial and significant time” mean?

Substantial and significant time is defined in the Act. A child will be taken to spend substantial and significant time with a parent only if:

the time the child spends with the parent includes both:

days that fall on weekends and holidays; and

days that do not fall on weekends or holidays; and

the time the child spends with the parent allows the parent to be involved in:

the child's daily routine; and

occasions and events that are of particular significance to the child; and

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.

For an order for equal shared time or substantial and significant time to be made, it must be both:

in the best interest of the child; and

reasonably practicable.

But what do these “buzz words” mean?

## What does “in the best interests of the child” mean?

The court regards the best interests of the child as the paramount consideration when making any parenting order.

In determining what is in a child’s best interests, the court turns its mind to the primary and additional considerations set out in the Act.

## The primary considerations related to spending time with children

The primary considerations are:

the benefits to the child of having a meaningful relationship with both of the child’s parents; and

the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

However, the court is to give greater weight to the second consideration; the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

## The additional considerations

The additional considerations include:

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 the child’s view. You can read more about this in our article, [“Are the views of the child considered in family law?”](#)

the nature of the relationship of the child with:

each of the child's parents; and

other persons, including any grandparent or other relative of the child;

the extent to which each of the child's parents has taken, or failed to take, the opportunity:

to participate in making decisions about major long-term issues in relation to the child;

to spend time with the child; and

to communicate with the child;

the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;

the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

either of his or her parents; or

any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;

the practical difficulty and expense of a child spending time with or 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;

the capacity of:

each of the child's parents; and

any other person (including any grandparent or other relative of the child);

to provide for the needs of the child, including emotional and intellectual needs;

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;

if the child is an Aboriginal child or Torres Strait Islander child:

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

the likely impact any proposed parenting order under this Part will have on that right;

the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

any family violence involving the child or a member of the child's family;

if a [family violence order](#) applies, or has applied, to the child or a member of the child's family – any relevant inferences that can be drawn from the order, taking into account the following:

the nature of the order;

the circumstances in which the order was made;

any evidence admitted in proceedings for the order;

any finding made by the court in, or in proceedings for, the order; and

any other relevant matter;

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; and

any other fact or circumstance that the court thinks is relevant.

# What does “reasonably practicable” mean?

The court takes certain factors into account in determining what is “reasonably practicable”, including:

how far apart the parents live from each other;

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;

the parents’ current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind;

the impact that an arrangement of that kind would have on the child; and

such other matters as the court considers relevant.

## Get help from a family lawyer

In a nutshell, any parenting orders for time must be in the best interest of the child (having regard to both the primary and additional considerations) and reasonably practicable in all the circumstances. As you can see, there is a lot to consider. A family lawyer experienced in childrens’ matters will ensure you and your child consider all the necessary factors when applying for parenting orders.

---

*The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*