

INFORMATION BROCHURE

January 2007

Children &  
Parenting Orders  
**INTERIM HEARINGS**

The Family Law Act 1975 underwent substantial amendments as a consequence of the commencement of the Shared Responsibility Act which commenced on 1 July 2006. (See our Brochure Children & Parenting Orders.

Interim parenting proceedings cannot determine the long-term rights and obligations of the parties and the children. Accordingly, the court will not ordinarily be drawn into matters of contentious matters of fact, and all matters relating to the merits of each party's case.

The principles that determine the adjudication of interim parenting matters were, up until the legislative changes which occurred on 1 July 2006, reflected in a long line of authority, most recently stated in the case of *Cowling and Cowling* (1998 FLC 92-801). However, the Full Court of the Family Court (*Goode & Goode*) has now identified the process for the determination of interim proceedings for parenting order matters. The Court said in summary that the amendments of the Family Law Act (1 July 2006) had the following affect:

- Unless the court makes an order changing the statutory conferral of joint parental responsibility then each parent has all the duties and powers and authority by law which parents have in relation to children and that parental responsibility is not displaced except by an order of the Court or the provisions of a parenting plan made between parties.
- The making of a parenting order triggers the application of a presumption that it is in the best interests of the child for each of the child parents will have *equal shared parental responsibility*. That presumption must be applied unless there are reasonable grounds to believe that the parent or a person who lives for the parent has engaged in abuse of the child or family violence.
- If it is appropriate to apply the presumption of *equal shared parental responsibility* it is to be applied in relation to both final and interim orders unless in the case of making an interim order the Court considers it would not be appropriate in the circumstances to apply it.
- The presumption of *equal shared parental responsibility* may be rebutted

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where the Court is satisfied that the application of a presumption of *equal shared parental responsibility* would conflict with the best interests of the child.



- When the presumption is applied, the first thing the court must do is to consider making an order if it is consistent with the best interests of the child and reasonably practicable for the child to spend equal time with each of the parents. If equal time is not in the interests of the child or reasonably practicable the court must go on to consider making an order, if it is consistent with the best interests of the child and reasonably practicable, for the child to spend *substantial and significant time* with each of the parents.
- The Family Law Act provides guidance as to the meaning of *substantial and significant time* and also to the meaning of reasonable *practicability* as follows:

“ substantial and significant "time is defined to mean the time the child spends with the parent and include both days that fall on weekends and holidays and days that do not fall on weekends and holidays and also the times the child spends with the parent allowing 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.

- Where neither the concept of equal time nor substantial and significant time delivers an outcome that promotes the child's best interests then the issue is at large and to be determined in accordance with the child's best interests.
- The child's best interests are ascertained by consideration of the objects and principles set out in the Family Law Act and the primary an additional considerations (see our Brochure Children & Parenting Orders).
- When the presumption of *shared equal shared parental responsibility* is not applied the court is at large to consider what arrangements will best promote the child's interests, including, if the Court considers it appropriate, an order that the child spend *equal or substantial and significant time* with each of the parents. The court may make orders for equal or substantial and significant time even if neither of the parties has applied for it bearing in mind the best interests of the child being the paramount consideration for the court.

The Full Court then stated that Interim proceedings are therefore conducted by the Court as follows:

- Identifying the competing proposals of the parties;

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- identifying the issues in dispute in the interim hearing;
- identifying any agreed or uncontested relevant facts;
- considering the matters in section 60CC that are relevant and, if possible, making findings about those matters. (In interim proceedings there may be little uncontested evidence to enable more than a limited consideration of these matters to take place);
- deciding whether the presumption of *equal shared parental responsibility* is in the best interests of the child applies or does not apply because there are reasonable grounds to believe that there has been abuse of the child or family violence or, in an interim matter the court does not consider it appropriate to apply the presumption;
- if the presumption does apply, deciding whether it is rebutted because application of it would not be in the child's best interests;
- if the presumption applies and is not rebutted, the court will consider making an order that the child spend equal time with the parents unless it is contrary to the child's best interests as a result of consideration of one or more of the matters in section 60CC or is impracticable;
- if equal time is found not to be in the child's best interests, considering making an order that the child spend *substantial and significant time* with the parents unless that is contrary to the child's best interests as a result of the consideration of the one or more of the matter is set out in section 60CC, or if impracticable;
- if neither *equal time* nor *substantial and significant time* is considered to be in the best interests of the child, then making such orders in the discretion of the court that are in the best interests of the child as a result of the consideration of one or more of the factors in section 60CC;
- if the presumption of *equal shared parental responsibility* is not applied or is rebutted, then making such order as it is in the best interests of the child in consideration of one or more of the matters in section 60CC;
- then the Court may need to consider *equal time or substantial and significant time*, especially if one of the parties has sought it or, even if neither party has sought it, if the court considers after affording procedural fairness to the parties it to be in the best interests of the child

The above is meant to be an overview of the court's attitude and method of dealing with interim applications regarding parenting issues. Each particular case will be decided on its own merits and on the basis of the overriding consideration of the court which is the best interests of the child or children.



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