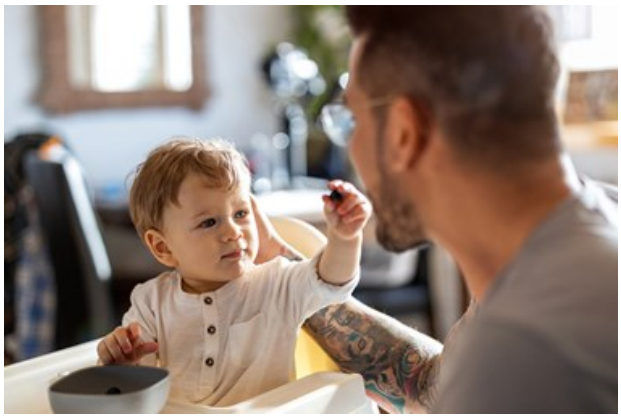


What is parental responsibility?

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In family law, parental responsibility means all the duties, powers and responsibilities that parents have in relation to their children. In this blog, we explore how the Court deals with parental responsibility in parenting matters.

Ordinarily, every parent of a child under 18 years of age has automatic parental responsibility for the child. This is the case irrespective of whether the parents are married, in a de-facto relationship, separated, or never in a relationship.

Parental responsibility gives parents the power to make both ‘day to day’ decisions and ‘major long-term’ decisions.

Day-to-day decisions

Day to day decisions are deemed more minor decisions such as what the child will eat or wear. It is not necessary for parents to consult one another on these types of issues.

Long-term decisions

Long-term decisions, on the other hand, are more major decisions related to the long-term care, development and welfare of the child. These could include issues such as the child’s:

- name;
- education (eg, where the child will go to school);
- religion or culture;

- health care (eg, authorising medical procedures); and
- living arrangements.

Equal shared parental responsibility vs sole parental responsibility

Equal shared parental responsibility

Equal shared parental responsibility means that both parents are legally required to make a genuine effort to consult with each other and come to a joint consensus regarding long-term decisions.

Sole parental responsibility

If a parent is given sole parental responsibility, this means that they are the only parent who can make decisions pertaining to long-term care, development and welfare of the child.

A parent with sole parental responsibility will **not** have to consult with the other parent or have them agree with major decisions, such as which school the child will attend and other considerations outlined above.

Parental responsibility laws before 6 May 2024

Prior to 6 May 2024, there was a "presumption of equal shared parental responsibility" between both parents unless it was rebutted. The presumption may have been rebutted if the Court determined that it was not in the child's best interests for both parents to have shared parental responsibility.

For example, the presumption did not apply if there were reasonable grounds to believe that a parent or person living with the child has engaged in family violence or child abuse or a high level of conflict existed between the parents.

Under the old regime (prior to May 2024), in cases where it was determined that equal shared parental responsibility may not have been in the best interests of the child, a court may have considered making an order for sole parental responsibility.

Parental responsibility laws from 6 May 2024

As of 6 May 2024, and following amendments made to the *Family Law Act 1975* (Cth), there is no longer a "presumption of equal shared parental responsibility".

Under the current legislation (from May 2024), a Court can still make orders allocating responsibility for making long-term decisions regarding a child, which may provide for joint decision-making or sole decision-making or a combination of both.

For example, the Court can order a parent to have sole parental responsibility for a specific issue such as health care and joint decision-making for the remaining major long-term issues. This means that the Court decides on the allocation of parental responsibility on a case-by-case basis, having regard to the child's best interests as the paramount consideration.

If the Court makes an order for joint decision-making about any issue(s), the parties are required to consult each other in relation to each such decision and make a genuine effort to come to a decision jointly. The law does not require any other person, such as schools and medical practitioners, to verify whether the decision was reached jointly before acting upon it. This means that third parties no longer have the responsibility of establishing the joint nature of decisions.

From May 2024, parents are not required to consult with each other regarding decisions that are not relating to major long-term issues such as what the child eats or wears whilst the child is in their care. This often helps to minimise any tensions arising between parents regarding what decisions a parent can make whilst the child is spending time with them.

Parental responsibility v parenting arrangements

It is important to remember that parental responsibility is not the same as the time a child spends with each parent. The time the child spends with each parent is referred to as parenting arrangements. These arrangements must be made in the child's best interests and not the interests of the parents.

How a family lawyer can help

If you are navigating separation with children or have questions about parental responsibility and how it applies to your individual circumstances, please contact us and speak with one of our experienced family lawyers today.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.