

What the court considers when making a parenting order for your children



Deciding how much time a child should spend with each parent, the court considers your circumstances and what would be in your child's best interests.

When deciding what is in the child's best interests, the court must consider these six factors.

One factor is not more important than the others.

a. What arrangements would promote the safety of the children and each person who cares for the children.

This factor focuses on keeping children and carers physically and psychologically safe from being subjected to or exposed to family violence, abuse, neglect or other harm. The court is required to consider any history of family violence, abuse or neglect and any family violence orders.

b. The views of the child.

How much weight is given to the child's views will depend on the age of the child and their level of maturity as determined by the Court. There is no set age when a child can decide where they will live or how much time they will have with the other parent.

The court doesn't usually hear directly from children and children don't usually go into court. Children's views are mostly made known to the court through a report or an Independent Children's Lawyer. A child is never required to express a view if they don't want to.

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c. The developmental, psychological, emotional and cultural needs of the child

This would include things like:

- The age of the child
- Whether the child has any special medical needs that might impact the child's physical or emotional growth or their care needs
- The emotional nature of the child, for example, is the child particularly shy or uncomfortable in new situations?)
- The culture of the child's family and the culture that the child has grown up with.

d. The capacity of each person to provide for the child's developmental, psychological and emotional and cultural needs.

This would take into account things like:

- Parent's working arrangements and whether they would be available to care for the child when they are in their care
- Appropriate accommodation
- Appropriate ways to transport the child to any necessary appointments
- Any mental and physical ailments which would impact somebody's ability to care for the physical and emotional needs of the child
- A parent's knowledge and previous involvement in managing any complex needs of the child.

e. The benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so.

f. Anything else that is relevant to the particular circumstances of the child.

If a child is Aboriginal or Torres Strait Islander, the court must also consider the additional considerations:

1. The child's right to enjoy their Aboriginal or Torres Strait Islander culture by having the support, opportunity and encouragement necessary;
 - a. To connect with and maintain their connection with members of their family and with their community, culture, country and language
 - b. To explore the full extent of that culture, consistent with their age and development level and views
 - c. To develop a positive appreciation of that culture
2. How the proposed parenting arrangements would impact upon that right.

Parental responsibility

Parental responsibility is the responsibility to make long term decisions for the children.

Unless there is a court order varying who has this responsibility for the child, both parents can make decisions about the long term needs of the children.

Long term decisions include:

- Education
- Religious and cultural upbringing
- Health
- Name
- Significant changes to living arrangements

It does not include day-to-day issues about the child (such as what a child should eat, wear or do while with a parent) as those decisions are the responsibility of the parent the child is with.

When the court makes a decision about parental responsibility, they still need to consider the best interests of the child as the paramount consideration. There is no presumption that parents should have joint or sole parental responsibility as the court is required to consider each situation on its individual facts.

If a court says that parents should have joint shared parental responsibility for the major long-term issues in relation, the parents are required to consult with each other in relation to the decision and to make a genuine effort to come to a joint decision.