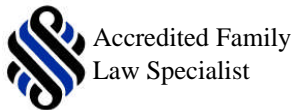




Randal Binnie  
Collaborative Lawyer  
& Mediator



# FRANCIS & BINNIE

lawyers



Mark Francis  
Family Lawyer and  
Mediator

*Expertise & Experience  
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# Shared Parenting

As from 1 July 2006 the Family Law Act 1975 was substantially changed by the operation of the Family Law Amendment (Shared Parental Responsibility) Act 2006 in respect of children's matters.

Each parent has equal responsibility for their children and this responsibility is not affected by the breakdown, separation or divorce of the parents in their relationship. The law considers that *equal shared parental responsibility* is in the best interests of a child, except where there is family violence or child abuse or there are other factors from which the Court determines that it is not in the best interests of a child.



Equal shared parental responsibility does not mean "shared care" but instead means that both parents share the responsibility for making decisions about *major long-term issues that affect their children*. These major long-term issues relate to those issues of a long-term nature affecting the care, welfare and development of a child and include issues relating to a child's education, religious and cultural upbringing, health, name, changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent. The term "major long-term issues" replaces the term "specific issues" which was previously used.

The law requires the parents of children to consider the possibility of the children spending *equal time with each parent*, however, if this is not reasonably practical or it is not in the best interests of a child, then consideration is given to the child living with one parent and spending *substantial and*

significant time with the other parent or other significant persons and the communication that the child has with these persons.

*The terms "residence" or "contact" or "specific issues" are no longer used and have been replaced by terms such as "lives with" and "spends time with" and "communicates with" and "major long-term issues", which terms more accurately described the arrangements for children.*

The law now places greater emphasis on the child's right to spend time with and communicate with persons other than the child's parents, for example, grandparents or a child relative, particularly where those persons are significant to the child's care, welfare and development and is in the best interests of the child in having this relationship.

In addition to the considerations which are set out in section Part VII of the Family Law Act 1975, the Court must also consider the primary considerations of the benefit to a child of having a meaningful relationship with both parents and the need to protect the child from physical and psychological harm.

The Family Law Act 1975 encourages parents to reach agreement about the future parenting arrangements for their children, particularly for the children to have a meaningful relationship with both parents and be protected from physical and psychological harm. Family counselling and family dispute resolution (mediation) can be obtained from Family Relationship Centres (free of charge for up to three hours) to confidentially assist parties reaching an agreement by discussing problems and exploring solutions to reach an agreement.

The courts have implemented "pre-action procedures" to encourage people to resolve disputes involving children by an agreement before an application is filed in court. These procedures include the parties making a genuine effort to resolve the dispute by using family dispute resolution. Before a court will accept an application for filing in a parenting matter, a certificate from an approved organisation must also be filed to confirm compliance

with the pre-action procedures. The requirement to comply with the pre-action procedures does not apply where there is child abuse or family violence, or a basis for urgency. Even after court proceedings have been commenced, parties can be required either by consent or by an order of the court to participate in family dispute resolution.

Parents may reach an agreement about the arrangements for children and these arrangements documented in either a parenting plan or in consent orders made by the court. Parenting plans are not legally enforceable by the court however the court will take into account a person's conduct relative to the parenting plan in the event of there being later court action. Parenting plans are not required to be registered a filed with the court. Consent orders are orders made by the court with the agreement of all parties and are enforceable by the court in the event of a breach of the terms of the orders. Both the parenting plan and consent orders are documents which evidence the parenting arrangement agreed to by the parents for the children.

#### **Where there is no agreement!**

Where parents are unable to agree in relation to parenting issues, although having undertaken the family dispute resolution process and pre-action procedures, then the court will deal with the dispute by a process known as Less Adversarial Process (formerly known as Children's Cases Program). These family court proceedings are managed by a judge who takes an active role in the process and determines how the matter is to be conducted. As part of a process of the parties confer with family consultants who provides the parties with expert information relating to parenting issues. This procedure is less formal and adversarial than the usual court hearing and actively uses dispute resolution procedures to encourage the parties to reach an agreement. If an agreement cannot be reached then the dispute will be determined by the judge at a trial.

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& BINNIE**  
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