

Parenting Matters (de facto)

Best interest of the child

The best interests of the child **must** be regarded as the **paramount consideration**.¹

Primary considerations²

- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
- (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence

Additional considerations³ include:

- (a) 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 to the child's views; and
- (b) the nature of the relationship of the child with:
 - (i) each of the child's parents; and
 - (ii) other persons (including any grandparent or other relative of the child); and
- (c) ... see next page for further 'additional considerations'.



Equal Shared Parental Responsibility

The **presumption** is that it is in the best interests of the child for the child's parents to have **equal shared parental responsibility** for the child.⁴

- Parental responsibility is full and independent
- Parental responsibility may be exercised jointly or separately
- Separation does not affect parental responsibility, but parenting plans or orders will

The presumption of equal shared parental responsibility does not apply if there are reasonable grounds to believe there has been child abuse or family violence.⁵

The presumption of equal shared parental responsibility may be rebutted by evidence that satisfies the Court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.⁶

Further enquiries:

Post: PO Box 7848
Cloisters Square
PERTH WA 6850

Web: www.johnstonecrouse.com.au

Email: info@johnstonecrouse.com.au

Tel: 08 9561 8650



‘Additional considerations’ continued ...



- (a) 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 to the child’s views; and
- (b) the nature of the relationship of the child with:
 - (i) each of the child’s parents; and
 - (ii) other persons (including any grandparent or other relative of the child); and
- (c) the extent to which each of the child’s parents has taken, or failed to take, the opportunity:
 - (i) to participate in making decisions about major long-term issues in relation to the child; and
 - (ii) to spend time with the child; and
 - (iii) to communicate with the child; and
- (da) the extent to which each of the child’s parents has fulfilled, or failed to fulfil, the parent’s obligations to maintain the child; and
- (d) the likely effect of any changes in the child’s circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or
 - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living; and
- (e) the practical difficulty and expense of a child spending time with and 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; and
- (f) the capacity of:
 - (i) each of the child’s parents; and
 - (ii) 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; and
- (g) 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; and
- (h) if the child is an Aboriginal child or a Torres Strait Islander child:
 - (i) 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
 - (ii) the likely impact any proposed parenting order under this Part will have on that right; and
- (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child’s parents; and
- (j) any family violence involving the child or a member of the child’s family; and
- (k) 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:
 - (i) the nature of the order;
 - (ii) the circumstances in which the order was made;
 - (iii) any evidence admitted in proceedings for the order;
 - (iv) any findings made by the court in, or in proceedings for, the order;
 - (v) any other relevant matter; and
- (l) 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
- (m) any other fact or circumstance that the court thinks is relevant.

¹ Section 66A of the *Family Court Act 1997* (WA).

² Section 66C(2) of the *Family Court Act 1997* (WA).

³ Section 66C(3) of the *Family Court Act 1997* (WA).

⁴ Section 70A of the *Family Court Act 1997* (WA).

⁵ Section 70A(2) of the *Family Court Act 1997* (WA).

⁶ Section 70A(4) of the *Family Court Act 1997* (WA).

Disclaimer: The information on this page is intended to be general information only and NOT legal advice. No responsibility is accepted for any errors or omissions.

Last reviewed: 14 June 2019



PO Box 7848, CLOISTERS SQUARE WA 6850

www.johnstonecrouse.com.au

info@johnstonecrouse.com.au

Telephone: 08 9561 8650

ABN: 52 627 510 623