

# Children's Issues in Family Law Proceedings

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

The Family Court places great emphasis on proper arrangements and care being available for all children. The Court has the power to make orders regarding any child of a relationship, whether the parties are married or not, until the child is 18 years of age. The law in relation to the care of children changed dramatically in 1996 and the information contained in this Handout is relevant as at July 2006.

## Who has custody of my children and what are my rights after separation?

In 1996 the terms "guardianship", "custody" and "access" were abolished when referring to children of a marriage. Prior to the amendments in 1996, it was common practice for the Court to order that:

- 1) "joint guardianship" be granted to both parties, which covered the long term decisions for the children such as education, religious up-bringing etc; and
- 2) "sole custody" be granted to the parent who had the day-to-day care and responsibility of the children.

The Court now encourages parents to sit down together, or with a family consultant, and consider a wide range of shared responsibilities. Once agreement is reached, a *parenting plan* will be drawn up for the parties to sign. The plan may go into quite extensive detail including issues such as supervision, payment of pocket money and access to television and computers etc.

The major orders which will now be made under the Family Law Act are referred to as "residence" and "contact" orders.

## What do the terms "residence" and "contact" mean?

A residence order relates to where the child or children will be residing. It is possible for both parents to have a residence order and for the child or children to reside with each parent on an alternate weekly or fortnightly basis. Unless expressly stated in the order, a residence order does not give the parent who has the order the right to make any major decisions in relation to children.



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Where a sole residence order has been made, a contact order will be made to permit the other parent to have contact with the children. The type of contact can be either in the form of face to face contact, telephone contact, mail or even email.

## **Who is responsible for collecting and returning the children and any associated costs?**

Both parents are usually encouraged to share the travelling arrangements ie one parent will either collect or deliver the children at the commencement of a contact period, and the other parent will then either collect or deliver the children at the end of the period. Once children are old enough to travel alone and unaccompanied, and if there is reliable public transport between the two homes, then this is a viable option. For example one parent may put the children on a bus at Perth, and the other parent may collect them from the bus at Mandurah.

If the parents are unable to agree on arrangements for the payment of travelling expenses, the Court has the power to decide who will be responsible for any travelling and associated costs. The Court will first take into consideration the financial position of both parents. The Court will also look at such factors as whether one parent decided to move a considerable distance from the other, thereby increasing travelling expenses. In this situation it may be decided that it is reasonable for this parent to meet the costs associated with travelling. If, for example, a mother is unable to work and her only income is an amount of child support and a supporting parent's benefit, the Court will look at the financial position of the father, and may order that he is to pay for all travelling expenses until such time as the mother is able to contribute. In this case, the father is then able to apply to the Child Support Agency to have the amount of any child support he pays to the mother reviewed and possibly reduced.

## **What happens during school holidays and special occasions such as birthdays, Christmas Day, Father's Day or Mother's Day?**

A contact order will normally provide for the child or children to spend at least one half of their school holidays with the parent who does not have a residence order. If the parents live a considerable distance apart, ie interstate, holiday contact becomes even more important as in many cases this is the only time that the parent can physically see the children.

A contact order will usually also provide for Christmas Day to alternate each year between the parties. With regard to birthdays, Father's Day and Mother's Day, a contact order will can also provide that these days be spent with a specific parent (distance and travelling permitting).

Again, if an amicable agreement can not be reached regarding school holidays and special occasions, the Court has the power to make this decision for the parents.

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## **What happens if there are more children?**

In the 21<sup>st</sup> Century it is not uncommon to have children from different relationships residing in the one household. If the children have a positive relationship with all members of the household, the Court will encourage an arrangement where they are able to maintain those relationships when making any orders for residence or contact.

## **What if either I or my spouse wish to move interstate or overseas?**

The law in this area has been established by cases, decided by judges. At present, the law permits the parent to move interstate or overseas with the children, in the majority of cases, unless there are good reasons why they should be restrained from removing the children. This is a very difficult area of law where the Courts have been asked on a number of occasions to make decisions which will cause serious hardship to one parent or the other. It is strongly recommend that you consult us.

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