

# Can you have sole and equal shared parental responsibility?

## **What is "parental responsibility"?**

"Parental responsibility" means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

It covers day-to-day decision making in relation to a child (such as bedtimes, meals, etc) and also "major long-term issues" such as education, religious and cultural upbringing, health, the child's name and significant changes to the child's living arrangements.

## **The presumption:**

The Family Law Act says that the Court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility (ESPR) for the child unless there are reasonable grounds to believe that a parent has engaged in abuse of the child or family violence, or the Court is satisfied that it would not be in the best interests of the child for the parents to have ESPR.

When parents have ESPR they must make joint decisions in relation to major long-term issues affecting the child, but each parent can continue to make their own day-to-day decisions.

## **Challenging the presumption:**

If the presumption of ESPR does not apply or is rebutted, then the Court may decide that one parent has "sole parental responsibility", which means the parent with sole parental responsibility can make unilateral decisions about major-long term issues such as health, education and religion.

## **What about a combination?**

However in some cases the Court has made orders for the parents to have ESPR for all issues except for one or two specific issues which one parent has sole responsibility for. This might be appropriate in cases where, for example, the parents do not have good communication and the child has specific medical issues which require decisions to be made regularly about significant health matters such as surgery and other invasive treatment. The Court may decide that it is appropriate to expect the parents to make joint decisions about other issues like education and the child's name because

they are usually one-off or infrequent decisions, but that the level of conflict involved in requiring the parents to frequently communicate and make decisions about health issues might not be in the best interests of the child.

**An example:**

In a recent case the father challenged on appeal the validity of an order made by the trial Judge which provided for the mother to have sole parental responsibility for the child except for all decisions in relation to the child's name, religious upbringing, and any significant changes to the child's living arrangements. The orders also required the mother to consult with the father about the issues she had sole responsibility for, but she had the final say if there was no agreement.

The trial Judge had determined that the presumption of ESPR did not apply because the father had perpetrated family violence on the mother during the relationship but also that the parents did not have the capacity to communicate with each other usefully about matters of significance to the child. The Judge held that there was therefore a requirement for one parent to have the capacity to make decisions.

The Full Court on appeal held that the Family Law Act permitted orders to be made which provide for parental responsibility for some long term issues to be shared while others are not and, additionally, that parental responsibility for some issues could be shared equally while others are not shared equally or not shared at all. Further, the Full Court held that even though the presumption of ESPR did not apply, the Judge could still make orders for some or all aspects of parental responsibility to be shared equally.