



# family flyer



## Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

## This edition includes:

- Shared Parenting - Changes in Family Law

## SHARED PARENTING - CHANGES IN FAMILY LAW

### What is happening?

On 1 July, 2006 the most significant changes to the Family Law Act in 30 years will commence.

The changes will include:

- A change in terminology. "Residence" and "contact" will be removed and replaced with "lives with" and "spends time with and communicates with";
- The introduction of a presumption of "shared parental responsibility";
- The Court having to consider making an Order that a child spend "equal time" with each parent or failing that, having to consider making an Order that a child spend "substantial and significant" time with each parent;
- The commencement of Family Relationship Centres;
- The "Children's Representative" will become the "Independent Children's Lawyer";
- Commencement of the "Children's Cases Program"; and
- New "Contravention" provisions.

### New Laws for Children:

From 1 July, 2006 the Family Law Act will approach children's matters as follows:

- The Court must apply a presumption that a child's parents have equal "shared parental responsibility" for the child.
- The presumption does not apply if there has been family violence.

- If a Court Orders that a child's parents have equal shared parental responsibility the Court must then consider whether the child spending "equal time" with each of the parents would be in the child's "best interests" and "reasonably practicable".
- If the Court does not make an Order for "equal time" the Court must consider whether the child spends "substantial and significant time" with a parent if it is in the "best interests" of the child and "reasonably practicable".

### When will Equal Time be Ordered?

The presumption of shared parental responsibility will apply in most cases.

Determining what is in a child's "best interests" will be considered under "primary" and "secondary" considerations.

The "primary considerations" relate to the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from harm.

The "secondary considerations" include 12 factors such as, the child's views, the child's relationship with the parents and other people (including grandparents), the likely effect of any change in the child's circumstances, practical difficulties and expense that may arise, the maturity of the child, family violence and cultural issues.

A new factor that the Court must also consider is "the willingness of each parent to facilitate and encourage a close relationship between the child and the other parent".

Whether an arrangement is "reasonably practicable" will require the Court to consider how far apart the parents live, the parents capacity to implement such an arrangement and communicate and resolve difficulties with each other and the impact of the arrangement on the child.





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**What is "substantial and significant" time?**

"Substantial and significant" time is when the child's time with the parent includes weekends, holidays and days that do not fall on weekends or holidays and that time allows the parent to be involved in the child's daily routine and significant events and allows the child to be involved in occasions that are special to the parent.

**Who makes day to day decisions?**

"Long term" issues (i.e "shared parental responsibility") include a child's education, religious and cultural upbringing, health, name or a change to the child's living arrangements that make it harder for the child to spend time with a parent. Decisions outside of that are termed "day to day" decisions.

Unless specifically covered in a Court Order "day to day" decisions will be made by the person caring for the child without a need to consult the other parent.

**What are parenting plans?**

A parenting plan can deal with a wide range of child matters, but not Child Support. They are not registered in Court and are not enforceable.

Where there is no Court Order the terms of the most recent parenting plan must be taken into account by the Court, when making a parenting Order. A Court Order is subject to a parenting plan if the plan is subsequently entered into by the parents, irrespective of the circumstances leading to the making of the plan and the Order.

**Who has to go to Mediation?**

Over the next 3 years Family Relationship Centres will open across the country as a "single entry point" to the Family Law system. These Centres are designed to provide general information and (if appropriate) Mediation services, not legal advice.

Mediation will be necessary before any Application to the Court can be made.

Compulsory Mediation will be rolled out in 3 phases.

Phase 1 (1 July, 2006 to 30 June, 2007) will make the existing dispute resolution provisions under the Family Law Rules apply to all Courts applying the Family Law Act.

Phase 2 (1 July, 2007 to 30 June, 2008) will prevent the Court hearing an Application unless the Applicant files a certificate from a family dispute resolution practitioner (some exceptions will apply).

Phase 3 is unclear in its terms but will operate from 1 July, 2008.

**What if you want to change a current Court Order?**

Variation of a current Court Order requires the Court to be satisfied that there has been a "significant change in circumstances". The new legislation will not constitute a "significant change in circumstances".

**What is the Children's Cases Program?**

The Children's Cases Program is how the Court will deal with matters at a Final Hearing stage. The program represents a move away from the adversarial Court process towards a Mediation process managed by a Judge.

**Get Advice:**

The new laws will most likely result in increased time in "Contact" Orders and make it difficult for "resident" parents to relocate. It will also effect the evidence that is required and how the Court deals with it.

It is critical that you get Specialist Family Law advice.

For further information contact us on telephone (07) 3221 4300 or visit us at [www.michaelynychfamilylawyers.com.au](http://www.michaelynychfamilylawyers.com.au).

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