

Family Law Alert

April 2008

Can One Parent Decide Where a Child Goes to School?

With the commencement of the new year 2008, and the preparation for the return of children to school many parents are faced with the decision of where their children will attend school and this raises the question **"can one parent decide on issues of a child's education without consulting the other parent?"**

To answer that question we need to look at two concepts "parental responsibility" and issues regarded as "major long term issues" which affect children.

What is "Parental Responsibility"?

"Parental responsibility" is essentially a responsibility of parents of a child to make all the necessary decisions to ensure the child's needs are met. Such decisions affect the long term welfare of a child and include, but are by no means limited to, decisions regarding:

- where a child lives;
- what medical treatment a child receives;
- the child's education;
- the religious upbringing of a child;
- the name a child uses;
- the protection of a child from harm;
- the child's passports;
- marriage of a child under 18 years; etc

Generally speaking parents have, and indeed **share**, parental responsibility for their children, regardless of any changes to the living arrangements of the parents, or changes to their relationship, e.g. where a child's parents separate or remarry.

It is only when a dispute arises between parents regarding their children, which comes within the sphere of the **Family Law Act 1975** ("FLA"), that the need to allocate parental responsibility might arise. If a Court order is made in relation to a child and the order does not specifically allocate parental responsibility or some aspect of it to one parent, then both parents retain their existing responsibilities.

Since 1996 the FLA has included a definition of the concept "parental responsibility" at **s.61B** as follows:

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

In July 2006, the FLA saw far reaching changes in the way the Court deals with parenting matters, and the introduction of the **Family Law Amendment (Shared Parental Responsibility) Act 2006** has resulted in the concept of "parental responsibility" being a central tenant embodied in the legislation. As a result of the changes the FLA now expressly refers to the concept of **"equal shared parental responsibility."**

Despite the recent changes and the concept of equal shared parental responsibility being introduced, Family Court judges and Federal Magistrates have always focused on matters which affected the long term care, welfare and development of children. There is nothing to suggest that the manner in which the Court has dealt with matters concerning the long term care of children is different to general community perceptions concerning "parental responsibility."

Another consequence of the 2006 amendments to the FLA was the introduction of the concept of “major long term issues”. These issues are regarded as matters or decisions which are quite separate from those which affect children on a day to day basis, eg what time a child goes to bed or what a child might wear on any given day. There is no requirement for parents to consult on issues that are of day to day nature. However, having said that, there are some matters which might normally be regarded as day to day issues, but which have the potential of being major long term issues. For example, what a child eats during time spent with a parent is normally a day to day issue and a matter for the parent, in whose care the child is at the time, to be responsible for. But, if the is a significant issue with a particular child’s health and diet, then the decision as to what the child eats has the potential of being a major long term issue which needs the consideration, cooperation and joint involvement of both parents.

What are “Major Long term Issues”?

Major long term issues are now contained in a non-exhaustive list **s. 4(1)** of the FLA. This section provides that:

“major long term issues, in relation to a child, means issues about the care welfare and development of the child of a long term nature and includes but is not limited to issues of that nature about:

- a) the child’s education (both current and future);
- b) the child’s religious and cultural upbringing;
- c) the child’s health;
- d) the child’s name;
- e) changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with a parent.

So, while the concepts of “parental responsibility” and the long term welfare of a child are not new, what is new is that the FLA now contains in **s.61DA**, a rebuttable presumption that it is in the best interest of children that their parents have “*equal shared parental responsibility*” for them.

If there is an order of the Court, for parents to equally share parental responsibility for a child, the FLA also now provides for what is to happen where a major long term decision is to be made. **Section 65DAC(2)** provides that where two or more persons share parental responsibility for a child, and the exercise of that responsibility involves the making of decisions about major long term issues, the order is taken to require that the decision is to be made **jointly**.

The FLA also imposes a further obligation on parents who share equal parental responsibility for a child; to **consult** each other about major decisions and that they should make a genuine effort to reach a joint decision regarding any major long term issue affecting the child.

Based on the very clear terms contained in the FLA regarding the exercise of parental responsibility and the making of decisions about major long term issues affecting a child, and the Court will take a very firm position with regards to any parent who makes any unilateral decisions which affects a child’s long term welfare, where that parent has not consulted the other parent or tried to reach a joint decision on the particular issue.

Clearly, in light of the above, a child’s schooling is now squarely addressed as an issue which requires both parents to **consult** each other and to make decisions regarding the child’s education **jointly** and to do otherwise could have significant consequences particularly where there is a Court order for parents to equally share responsibility for a child.

If you wish to discuss parenting issues or require further information please do not hesitate to call us on (07) 3223 6424.

(Source: Australian Master Family Law Guide)