



PARENTING MATTERS

Similar to the unknown about your financial future, for many parents the act of separation can be the most anxious time for them, worried about the impact that the separation will have on their children. It is natural to feel compelled to 'protect' the children from the parental dispute.

At Parry Coates Family Law, it is our mission to 'protect' you, the parent, from lengthy and expensive litigation regarding your children. Parents who take control and manage their own parenting dispute and make decisions with the other parent about 'their' children, will likely cement a good co-parenting relationship. We will educate, guide and advise you about how to make decisions which are in the best interests of your children. Further, we have the resources to refer you to an appropriately qualified professional for 'other' assistance. For example, if you and the other parent are aware of the legal process but need help with communication, we often refer parents to what we call "communication counselling" or "co-parenting counselling".

Again, like a property settlement dispute, Parry Coates Family Law do not advocate at first instance for what can be an entrenched legal battle. We know from our family law experience that a mediated solution is not only the best outcome for the children, but also for the parents. A parenting agreement provides an element of certainty and control with respect to the arrangements for 'your' children.

At Parry Coates Family Law we also know that there are some matters that cannot avoid the Court process. For as many parenting matters that resolve by agreement, there are just as many, if not more that require the Court's intervention.

Again the path of last resort! Why?

Court Intervention

When an application is made to the Court, you will be asking a Judge, a third party, to make a decision about 'your' children. Parents have the relationship with 'their' children, a Judge does not. A Judge will make a decision based on the evidence before them and often rely on independent evidence from an expert.

Litigation is expensive and lengthy. It can take anywhere up to two (2) years from the time the court proceedings are commenced until the end of the matter when the Judge has made their decision.

Regardless of whether you litigate through the courts or mediate an agreement via alternative dispute resolution, the legal principles are the same.



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Legal Principles

The best interests of the children are the paramount or most important consideration when a parenting order or parenting plan is being made. The approach to be taken in all parenting matters was identified in a Full Court case in 2006. Whilst this decision is some many years old, it remains 'good law'.

At Parry Coates Family Law, we canvass and identify with you at the beginning of your parenting matter, the following:-

- Each parents proposal
- The issues in dispute; and
- The agreed facts, if any.

We encourage you to eliminate as many issues in dispute as possible. By narrowing the dispute we can move your matter forward, focus your attention on your children's needs, stage of development and the importance of relationships with parents, siblings and other important people in their lives.

For family lawyers the legal principles are common knowledge. At Parry Coates Family Law we understand that these legal principles are foreign and unfamiliar to clients. We pride ourselves in educating our clients, using plain English where we can and minimising the use of legal jargon. However sometimes this is unavoidable. For example, you need to familiarise yourself with section 60CC of the Family Law Act 1975. This section outlines the factors that the court must take into account when deciding what is in a child's best interest.

There are two classes of considerations – primary and additional. The primary considerations are:-

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

After looking at the primary considerations above, the next step is to consider the fourteen (14) 'additional' factors in section 60CC(3). When you meet with us, we will explain the additional factors in detail and assess which are relevant to your matter and those which are not. For example, "any views expressed by a child, subject to other factors such as their maturity or level of understanding" is not likely to be relevant for a child who is still very young.

Equal Shared Parental Responsibility

What does this mean?

Before separation, it is common that parents make decisions about their children's welfare, such as their education or medical treatment, together, fulfilling their responsibilities as parents. This 'responsibility' does not change or shift to one parent alone after separation.

Equal shared parental responsibility is a presumption which exists after separation and requires parents to make decisions together about their children's welfare. In addition to educational or major medical decisions, equal shared parental responsibility extends to other major decisions such as counselling for a child, dental treatment and religious decisions.

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A common complaint in a parenting dispute is that poor communication with the other parent prevents or makes it more difficult for parents to make decisions together. At Parry Coates Family Law we ask you about your ability to co-parent with the other parent and encourage you to think about ways this could improve. Whilst being mindful that there may be certain factors prohibiting good communication, such as family violence, abuse or a power imbalance, in our experience if these don't exist, the benefits for your children when positive co-parenting exists outweighs the pitfalls. For parents with very young children, there are a lot of decisions that need to be made before they reach adulthood.

When the presumption of equal shared parental responsibility exists, we will work through the next steps with you. We will ask you to consider what parenting arrangements should be put in place having regard to your children's best interests. When you are considering the best arrangements for your children, think about whether 'equal time' between each of you and the other parent is in their best interests or whether 'substantial and significant' time with each parent is more beneficial.

At Parry Coates Family Law, our discussions with you will be open and candid. Our advice is practical and aimed at achieving the best outcome for you and your children.

Who can apply to the Court?

If a resolution by negotiation, mediation or family dispute resolution (FDR) is not possible or has not achieved an outcome, then the Family Court or Federal Circuit Court is available to assist you. It is compulsory in most parenting matters that FDR occurs before any application is made to the Court. It is not only the parents of a child that may apply to the Court. The jurisdiction of the Court is open to applications from:-

- either or both of a child's parents;
- a grandparent of a child;
- any other person concerned with the care, welfare and development of a child.

Parry Coates Family Law are available to assist you with your application and attend with you at all Court events. We are committed to ensuring your journey after separation is focussed on you and your family. We will reassure you that your different direction will lead to new beginnings.

Expert Reports

In family law matters, a report can be prepared by an 'expert' in relation to a child, a parent or the family (which may include new partners, grandparents and others concerned with the care, welfare and development of a child). These reports are referred to as 'expert reports' or 'family reports' or 'medical reports'. A report in relation to a child should be commissioned 'jointly' by the parents and the costs associated with the report are generally shared equally between them.

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A report or medical document, such as a letter from a child's counsellor, obtained unilaterally by one parent must be disclosed to the other parent. This is not an 'expert' report but may be useful in negotiations to identify a child's needs or health concerns. For example, if your child has been diagnosed by their treating Doctor as having diabetes, a medical report from that medical professional will be helpful to understand your child's routines and special medical needs.

If a report or document is disclosed to one parent and it has not been prepared pursuant to joint instructions from both parents, it is not an 'expert' report. It is subjective or one sided report. A good example of a one sided report is where one parent takes a child or children to a psychologist without informing the other parent or involving them in the process.

What does a 'family report' entail?

An expert family report writer is either jointly engaged by the parents or appointed by order of the Court. It is useful in many parenting disputes to obtain a report prior to commencing Court proceedings and in preparation for mediation. During the reporting process, the children, parents and sometimes others involved in the care, welfare and development of your children are interviewed by the expert. If there are active Court proceedings, each parent's court documents, information from Subpoena documents and Orders made will also be provided to the expert. The Judge allocated to your matter can also specify those matters they want the expert to consider.

At Parry Coates Family Law, we will walk you through the interview process and help you digest and interpret the expert's report once it is released.



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