

# ***Managing Serious Allegations: A Practical Approach***

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**MANAGING SERIOUS ALLEGATIONS IN PARENTING MATTERS:  
A PRACTICAL APPROACH**

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Contents

Working for the child's best interests as opposed to working for strategic advantage ..... 1

Engaging with the social sciences.....2

    Attachment .....2

    Alienation.....4

    Family violence.....6

The legal context: the concept of unacceptable risk .....9

Building positive outcomes: working collaboratively with experts, children's lawyers,  
the court and support services ..... 11

Appendix 1: An example of thoughtful parenting orders in a complex matter ..... 14

***Working for the child's best interests as opposed to working for strategic advantage***

As practitioners we all know that we are not mere agents of our clients, but above all officers of the court, and therefore have an obligation periodically to stuff wax in our ears and sail past the sirens of rival demands and loyalties.

And in no other area of legal practice is the imperative to conduct ourselves according to the highest ethical standards more pressing than in matters involving children.

The Court itself must, according to s 60CA of the FLA,

[i]n deciding whether to make a particular parenting order in relation to a child... regard the best interests of the child as the paramount consideration.

This gives us the clearest possible guidance to the appropriate stance to adopt in the conduct of matters involving children: we all owe a duty as officers of the court to ensure that our management of these matters supports the court in its ambitious endeavour of giving effect to the paramountcy principle, even if this brings us into conflict with the aspirations of our clients. Note I speak of a conflict with clients' aspirations, not with clients themselves. Our role is educative as much as anything else, and by assisting our clients to focus on the best interests of their children as seen through the twin lenses of law and social science, parents can potentially shift their gaze and outcomes can be improved for children.

The practice of family law, and in particular the management of parenting disputes, makes special demands on lawyers, and navigating these waters requires a level of maturity, wisdom, compassion and emotional resilience that can be extremely taxing to those of us who value simplicity in life. Nevertheless, the consequences for children of poor parenting arrangements are so great, that if we are not prepared to refine our skills and knowledge base to a very high degree, we ought not to be practising in this area.

Whether acting for mother, father or as ICL, the most urgent requirement is that the unvarnished truth about any child protection issue is brought to the court's attention. The court needs to know what the problem is and what is proposed to be done about it. Therefore, it is important to avoid strategic approaches when dealing with serious allegations and to throw our weight as practitioners behind the court's work of finding a functional, enduring, and above all safe outcome for children.

### ***Engaging with the social sciences***

Children and adults differ significantly. At its simplest, this may be expressed in terms of children being smaller and more dependent, whereas adults are larger and more independent. But there are far more critical differences that we need to be aware of. Most significantly, children are on a developmental trajectory that has largely come to an end for adults. The fact that at different ages children and young people are at different stages of development, means that at different ages the needs of children will differ, and it is reasonable to expect that constructive parenting-after-separation arrangements will match the developmental needs of the children to which they relate. It is therefore important that as lawyers we have some familiarity with the body of literature that has been generated in the social sciences around child and adolescent development in the context of family breakdown. A good place to start is a paper by Dr Jen McIntosh entitled *Children's responses to divorce and parental conflict: A guide for Family Lawyers*, which can be downloaded at [http://www.flerproject.org/doc/000033-Model Discussion Guide Family Lawyers.doc](http://www.flerproject.org/doc/000033-Model_Discussion_Guide_Family_Lawyers.doc). This paper contains a number of useful further references.

A word of caution: you would no more expect to become a developmental psychologist from reading one introductory textbook or a few articles than you would expect to become a competent lawyer from reading a couple of cases. The debates that go on in the social sciences are vigorous and often subtle, so it is very important to seek the assistance of appropriately qualified social science professionals on significant issues. This is particularly important given that children at the same developmental stage will differ from each other depending on factors such as their family context, their history of care, and their inherent individuality. One size definitely does not fit all where children are concerned, and we must be alive to potential problems and be prepared to seek the assistance of appropriately qualified professionals if there is any doubt about the effect an arrangement might have on children. The Court itself is regularly informed by report writers, Part 15 experts and treating health professionals. The conduct of successful parenting matters, particularly where there are challenging issues, is therefore a collaborative effort not just between judicial officers and lawyers, but across professions.

### **Attachment**

One concept that we all need to be aware of is *attachment*. This is of enormous significance in the first 4 to 5 years of life, and since disturbed or insecure attachment has been correlated with poor social and cognitive outcomes, we need to be alive to the possibility that

an arrangement, even one that both parents agree with, may not be in a young child's best interests.

Here's one description of the attachment system<sup>1</sup>:

This system, which at the most concrete level functions to keep the immature young in proximity to care-givers, is believed to have evolved to provide protection from harm of many sorts, including illness, predators, and aggression from others. The analogy of a thermostat is frequently invoked to explain how the attachment system functions. Changes in ambient temperature relative to the setting of a thermostat turn on the furnace until the temperature setting is reached. Analogously, the child's experience of fatigue, illness, anything threatening or frightening, and most especially, separation from the attachment figure results in strenuous efforts to approach the attachment figure or to bring him or her close. *Chronic frustration of this cycle inevitably leads to feelings of anxiety and distress and over time can cause the child to develop both adaptive and maladaptive internal defenses and behavior, which are often described as differences in the security of attachment relationships.* [emphasis added]

An important thing to note is that attachment is not the same as bonding or love. One can be bonded to a child and vice versa, without being an attachment figure for that child.

Attachment is a biological need of a child and must be distinguished from less fixed, though nevertheless important, emotional needs of small children.

The controversy that rages in the social science literature relates to (among other things):

- the possibility of there being more than one attachment figure;
- the effect of more regular, shorter periods of contact, as opposed to longer, less frequent periods of contact with a non residential parent;
- the effect of high conflict;
- age effects;
- gender effects.

One of the few things that is clear in this debate, is that it is difficult to make generalisations. Nevertheless, there do appear to be a number of issues that we

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<sup>1</sup> Judith Solomon and Zeynep Biringen, 'Another Look at the Developmental Research' (2001) 39(4) *Family Court Review* 355.

need to be on the lookout for and, if they arise, be prepared to think creatively or seek further assistance from an appropriately qualified professional. These are:

- the age of the child: the younger, the more caution should be exercised;
- signs of separation distress in the child (bear in mind here that children often display more distress when they are *returned* to an attachment figure after separation, rather than *during* the period of separation itself);
- the level of involvement each parent has had in the care of the child from a very early age: if a non-live with parent has been highly involved there may be less of a problem with, say, overnight time with a very young child than there would be with a less involved parent; similarly, it may be very important to maintain that relationship by providing for more frequent, shorter periods of time to be spent;
- the existence of violence or high levels of conflict;
- the existence of a pattern of substantially shared care since separation;
- the existence of other people such as half- or step-siblings and grandparents who have had significant involvement with the child from an early age;
- the physical proximity of the two parents' homes.

No matter what the relationship is like between the contact parent<sup>2</sup> and the child, understand that *time with* that parent equates to *time away* from the other parent. Much of the heat in the attachment debate as it applies to separated families is centred on the effect on young children of this unavoidable compromise. In acting for parents, particularly fathers who are seeking greater time with very young children, it is important to provide some reassurance that attachment issues are not the same as love, and that if this stage of a child's life can be managed well so that the child is able to build on a foundation of secure attachment, the chances that that child will have the capacity to relate well socially (including with their parents) are greatly increased.

## **Alienation**

Cases involving alienation are among the most difficult for the court and practitioners to manage. These are matters where a child or young person expresses a very clear and strong view that they do not wish to spend time with or indeed have anything to do with one

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<sup>2</sup> This is less cumbersome to write, though also less correct, than 'the parent with whom the child is not living', or the 'spending time parent'.

parent. They are often extremely difficult cases to turn around and a frequent outcome is that the rejected parent loses their relationship with the child.

Some of the distinguishing marks of these matters are:

- there is often a ‘rehearsed’ quality to the litany of denigration a child might engage in with respect to the rejected parent;
- the child justifies the alienation with memories of somewhat trivial events;
- the child’s description of parents is often highly dichotomised: one parent is all good, the other is all bad;
- the hatred often extends to members of the rejected parent’s family, frequently with little apparent justification.

Two prominent theoretical frameworks have been frequently applied over the past 25 years to explain this phenomenon, although neither is particularly satisfactory. The first, named ‘Parental Alienation Syndrome’ by Dr Richard Gardner, the American psychiatrist who developed it in the 1980s, has now been largely discredited, although it continues to attract adherents from father’s groups in particular. This theory postulates that alienation is caused by the favoured parent (‘the alienator’) engaging in a campaign of denigration against the rejected parent. As a remedy, Gardner advocated that children be removed from the care of alleged alienators and placed with the rejected parent. This theory enjoyed widespread support in the US in particular for some years and resulted in some alarming instances of children being placed with alleged perpetrators of child sexual abuse.

The other prominent theory postulates that alienation is a response to abusive behaviour engaged in by the rejected parent. Its advocates suggest that the fact of alienation is sufficient to alert us to the existence of serious abuse. While this does seem intuitively attractive, and children do sometimes reject abusive parents, this is by no means a certain result and in many terrible cases of abuse children do not in fact reject their abusers, but defend and protect them.

In a recent book US family therapist and lawyer Bill Eddy<sup>3</sup> traces the roots of alienation back to high conflict behaviours engaged in by either or both parents. These behaviours essentially involve the following three ingredients:

1. all-or-nothing (‘dichotomous’) thinking, leading to:
2. unmanaged emotions, leading to:
3. extreme behaviour.

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<sup>3</sup> *Don’t Alienate the Kids! Raising Resilient Children While Avoiding High-Conflict Divorce*. HCI Press (2010).

This is certainly consistent with what a number of other writers have pointed out as features of the family systems that include a child displaying alienating behaviours. These particular traits also feature strongly in the diagnostic criteria of a number of personality disorders, although Eddy is at pains to point out that he is not suggesting that all, or even most, cases of alienation and high conflict involve someone with a personality disorder. But he does speculate that these high conflict behaviours build up an impenetrable wall one brick at a time.

**Of course, none of this should be taken as suggesting that some parents do not actually engage in what might be described as deliberately alienating behaviours, or that a child might not reject a parent utterly as a result of abuse.**

Of great significance for us, however, is that it is very easy for advocates (whether they be lawyers or other professionals), court staff and the judiciary to get caught up in the drama of litigants' conflicts and respond with similar behaviours. Eddy speculates that a more useful way of engaging with the extreme behaviours of some litigants is for those of us involved in the family law system to ourselves prioritise *flexible thinking, managed emotions* and *moderate behaviours*.

It is a refrain that those of us working with separated families can't hear enough of: with skill, wisdom, compassion and self-reflection we can possibly make things better (sometimes very much better, sometimes just a little better); without much effort at all we can easily make things much, much worse.

### **Family violence**

The effect of conflict and violence on children is broad, deep and inevitably destructive. Accordingly, over the years social scientists, the Family Law Act, the courts and lawyers have become increasingly focussed on identifying the types of violence that occur in families, the effect on children of that violence, and strategies for protecting children.

In dealing with family violence, it is important to have regard to the different types of violence and the diversity of the players involved, as very different strategies may be called upon depending on what type of violence is presenting. The significant types of violence that we see in families can be categorised as follows (the extracts below are all from an important



2008 American article by Joan Kelly and Michael Johnson<sup>4</sup>, although the references have been removed):

**Coercive controlling violence:**

This form of 'intimate partner violence' is marked by

'intimidation; emotional abuse; isolation; minimizing, denying, and blaming; use of children; asserting male privilege; economic abuse; and coercion and threats... Because these nonviolent control tactics may be effective without the use of violence (especially if there has been a history of violence in the past), Coercive Controlling Violence does not necessarily manifest itself in high levels of violence. ... Coercive Controlling Violence is the type of intimate partner violence encountered most frequently in agency settings, such as law enforcement, the courts (criminal, civil, and family), shelters, and hospitals. Johnson, using Frieze's Pittsburgh data, found that 68% of women who filed for Protection from Abuse orders and 79% of women who contacted shelters were experiencing Coercive Controlling Violence. ... Although Coercive Controlling Violence does not always involve frequent and/or severe violence, on average its violence is more frequent and severe than other types of intimate partner violence.'

**Violent resistance:**

'The research on intimate partner violence has clearly indicated that many women resist Coercive Controlling Violence with violence of their own. ... Much of women's Violent Resistance does not lead to encounters with law enforcement because it is so short-lived. For many violent resisters, the resort to self-protective violence may be almost automatic and surfaces almost as soon as the coercively controlling and violent partner begins to use physical violence himself. But in heterosexual relationships, most women find out quickly that responding with violence is ineffective and may even make matters worse. ... The Violent Resistance that gets the most media attention is that of women who murder their abusive partners. The U.S. Department of Justice reports that, in 2004, 385 women murdered their intimate partners .... Although some of these murders may have involved Situational Couple Violence that escalated to a homicide, most are committed by women who feel trapped in a relationship with a coercively controlling and violent partner.'

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<sup>4</sup> Joan B. Kelly and Michael P. Johnson, 'Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions' (2008) 46(3) *Family Court Review* 476.

**Situational couple violence:**

'Situational Couple Violence is the most common type of physical aggression in the general population of married spouses and cohabiting partners, and is perpetrated by both men and women. It is not a more minor version of Coercive Controlling Violence; rather, it is a different type of intimate partner violence with different causes and consequences. Situational Couple Violence is not embedded in a relationship-wide pattern of power, coercion, and control.... Generally, Situational Couple Violence results from situations or arguments between partners that escalate on occasion into physical violence. One or both partners appear to have poor ability to manage their conflicts and/or poor control of anger .... Most often, Situational Couple Violence has a lower per-couple frequency of occurrence ... and more often involves minor forms of violence (pushing, shoving, grabbing, etc.) when compared to Coercive Controlling Violence. Fear of the partner is not characteristic of women or men in Situational Couple Violence, whether perpetrator, mutual combatant, or victim. Unlike the misogynistic attitudes toward women characteristic of men who use Coercive Controlling Violence, men who are involved in Situational Couple Violence do not differ from nonviolent men on measures of misogyny.'

**Separation instigated violence:**

'Of special relevance to those working with separating and divorcing families is violence instigated by the separation where there was no prior history of violence in the intimate partner relationship or in other settings .... Seen symmetrically in both men and women, these are unexpected and uncharacteristic acts of violence perpetrated by a partner with a history of civilized and contained behavior. Therefore, this is not Coercive Controlling Violence as neither partner reported being intimidated, fearful, or controlled by the other during the marriage. Separation-Instigated Violence is triggered by experiences such as a traumatic separation (e.g., the home emptied and the children taken when the parent is at work), public humiliation of a prominent professional or political figure by a process server, allegations of child or sexual abuse, or the discovery of a lover in the partner's bed. The violence represents an atypical and serious loss of psychological control (sometimes described as "just going nuts"), is typically limited to one or two episodes at the beginning of or during the separation period, and ranges from mild to more severe forms of violence. ...Separation-Instigated Violence is more likely to be perpetrated by the partner who is being left and is shocked by the divorce action. Incidents include sudden lashing out, throwing objects at the partner, destroying property (cherished pictures/heirlooms, throwing clothes into the street), brandishing a weapon, and sideswiping or ramming the partner's car or that

of his/her lover. Separation-Instigated Violence is unlikely to occur again and protection orders result in compliance.

## **Gender**

It is regrettable that gender politics has played such a significant role in confusing the debate around family violence. Nevertheless, the picture does seem to be clearing somewhat, and Joan Kelly and Michael Johnson in the article just cited conclude from an exhaustive examination of the available research that situational couple violence and separation instigated violence are as likely to be perpetrated by men as by women. The major gender difference appears in relation to coercive controlling violence, which appears to be predominantly perpetrated by males. Since violent resistance appears to be a reaction specifically to coercive controlling violence, it appears to be perpetrated more by females.

### ***The legal context: the concept of unacceptable risk***

The leading case remains the High Court decision in *M & M*<sup>5</sup>. It was in that case that the High Court approved the test of unacceptable risk in evaluating matters where there have been serious allegations of abuse. While *M & M* was concerned with allegations of sexual abuse, the principles laid down by the High Court have equal application to other forms of abuse, including family violence. It is important to understand that in asserting that judicial officers must evaluate whether a particular arrangement poses an unacceptable risk of abuse, the High Court was not suggesting that there is somehow an *acceptable* risk of abuse. As former Family Court Justice John Fogarty pointed out some years ago in an uncompromising article dealing with this issue<sup>6</sup>, a risk of sexual abuse to a child from a particular person may well be deemed unacceptable if it is only marginally greater than the risk posed by any other member of the community.

The essential point to grasp here is that the court is charged with a very delicate balancing of rival considerations, and that the outcome of that exercise can potentially lead to a loss of relationship with significant people in a child's life, or on the other hand expose a child to abuse. It is vitally important therefore that in cases where allegations of serious abuse or neglect become an issue, practitioners fully, and with the gravest self-responsibility, support the court in its challenging endeavour to make orders in children's best interests, rather than being seduced into fighting a tendentious forensic war between parents that may well dangerously obscure the landscape. As the High Court noted in *M & M*:

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<sup>5</sup> (1988) 12 Fam LR 606.

<sup>6</sup> 'Unacceptable risk – a return to basics' (2006) 20 *Australian Journal of Family Law* 249.

The Family Court's wide-ranging discretion to decide what is in the child's best interests cannot be qualified by requiring the court to try the case as if it were no more than a contest between the parents to be decided solely by reference to the acceptance or rejection of the allegation of sexual abuse on the balance of probabilities<sup>7</sup>.

While the Court was here directly concerned with dispensing with the need to make a finding of sexual abuse, the above comments focus our minds on the need to assess children's best interests overall, rather than limiting the exercise to an investigation (on the *Briginshaw*<sup>8</sup> standard or otherwise) of the likelihood of a particular event having taken place. Significantly, in *M & M* itself, the two appeals which were the subject of the judgment of the High Court were from decisions of judges who, though not satisfied that abuse had taken place as alleged, were nonetheless concerned that an unacceptable risk of abuse existed and made orders accordingly.

The *Briginshaw* test itself (which requires that in matters of gravity *exactness* of proof is required, rather than establishing a standard of proof intermediate between the civil and criminal standards) is now ensconced in s 140(2) of the Commonwealth *Evidence Act 1995*. The section as a whole reads as follows:

- (1) In a civil proceeding, the court must find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.
- (2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account:
  - (a) the nature of the cause of action or defence; and
  - (b) the nature of the subject-matter of the proceeding; and
  - (c) the gravity of the matters alleged.

The essential thing to bear in mind in cases where there is a serious allegation of abuse is that there are potentially two related, yet nevertheless separate, enquiries that the court may pursue. The first is an enquiry into whether or not a particular event took place. It is to this issue that the *Briginshaw*/s140 principle is applied. But the High Court in *M & M* was, as has been seen above, at pains to point out that the focus on an evidentiary battle over whether or not an event has actually taken place *in the past* can distract us from the essential work of the court to determine whether there is an unacceptable *present or future* risk of abuse to a

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<sup>7</sup> (1988) 12 Fam LR 606 at 611.

<sup>8</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

child, and this more fundamental enquiry is carried out by applying the ordinary civil standard unaided by s 140(2).

In the article referred to above, former Justice John Fogarty notes that it

is worth stressing at this point that it is not necessary in the assessment of unacceptable risk to take into account only components which are proved. The court is entitled to take into account factors which are not proved but which nevertheless raise issues of concern. This emerges quite clearly from the judgment in *M ...* The illustration by Lord Browne-Wilkinson in his dissenting judgment in *Re H* above, is an example. His Lordship referred to the war-time example of five unconfirmed warnings of approaching aircraft and whether there was a risk of an air-raid. Perhaps a rather outdated example now, but five unconfirmed warnings of a terrorist attack would have a present resonance. None are at that point confirmed, but they raise a risk which requires action<sup>9</sup>.

***Building positive outcomes: working collaboratively with experts, children's lawyers, the court and support services***

It is complex working with separated families toward the high, but tragically elusive, goal of establishing resilient parenting strategies that work in children's best interests. No one profession has all of the answers or all of the necessary skills that are required to achieve the best possible results. But collaboration is a challenging affair in itself.

I've reproduced below a table from a paper by Chris Huxham and Siv Vangen entitled *Ambiguity, Complexity and Dynamics in the Membership of Collaboration*<sup>10</sup>, which gives a very good summary of some of the key confounding issues that lead to what these two authors call 'collaborative inertia'. Not all of these items are relevant to the immediate environment of the court, but remember we're also frequently dealing with collaborations between government and community agencies such as FRCs, contact centre providers, and agencies providing courses and other support such as Unifam, Relationships Australia and Catholic Care.

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<sup>9</sup> Fogarty op cit at page 30.

<sup>10</sup> Chris Huxham, and Siv Vangen, 'Ambiguity, Complexity and Dynamics in the Membership of Collaboration,' (2000) 53 *Human Relations* 778.

## Summary of dimensions of ambiguity and complexity:

### Ambiguity

#### *Ambiguity in membership and status*

- Members' perceptions of who else is a member vary
- Members' perceptions of each other's status in the collaboration vary

#### *Ambiguity in representativeness*

- Members are confused over the degree to which an individual representative is representing an organization
- Members are confused over which organization, organizations or other constituency is being represented

### Complexity

#### *Complexity in structure*

- There can be complex hierarchies of collaboration
- Individuals and organizations are often members of multiple partnerships with overlapping membership
- Departments of an organization may become involved in partnerships independently of each other
- Collaborations often have complex structures involving partnership staff, executive committees, working groups and so on

### Dynamics

#### *Shifting membership*

- Government policies and other forces cause demise and reforming of organizations
- Individual representatives come and go or change their role within their organizations

#### *Shifting purpose*

- Government policies and other forces lead to refocusing of collaborative purpose (and hence of membership)
- Mismatches in members' agendas lead to continual negotiation of purpose (and hence the possibility of changing membership)
- Learning from past activity and completing agenda items also leads to continual negotiation

### *The pace of change*

- Changes can take place frequently, rapidly and sometimes imperceptibly

As well as these issues of ambiguity, complexity and dynamics, the cultural, and to a large degree linguistic, differences between disciplines, professions and sectors can frustrate our attempts to work together. In addition, underlying apparently straightforward professional cultural issues there are often more complex, subterranean issues of power and trust operating<sup>11</sup>.

As lawyers we are very good at unpacking stories and providing structure; social scientists are good at providing developmental context, deciphering the puzzles of conflict, seeing a way through the woods of trauma; every profession active in the family law system potentially adds something unique and valuable to the improvement of outcomes. But these very differences can work against each other. Professional rivalries, misunderstandings and resentments can poison the well, so it is vital that we make the effort to understand each other and prioritise functional relationships. This involves finding out about what's going on outside our own patch and developing the interpersonal skills needed to work through differences.

A little like the skills we expect our clients to develop to help them work together toward better outcomes for their children.

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<sup>11</sup> For further detail, see Mark A MacDiarmid, and Tracey A Willow, 'To Coerce Or to Collaborate: Human Rights Lawyers Relating With Other Professions,' (2008) 33(2) *Alternative Law Journal* 86.

**Appendix 1: An example of thoughtful parenting orders in a complex matter**

Following are the orders made by Murphy J in *Harridge & Harridge* [2010] FamCA 445 in June 2010. The case was complex, and involved not only evidence of a conviction for the use of child pornography on the part of the father, but also evidence of inadequate supervision of time with the father by the paternal grandparents. Nevertheless, His Honour was satisfied on the evidence of the value of these relationships, and sought to manage the otherwise potentially terminal child protection issues (from the perspective of a relationship between the children and these significant people) using the little-employed method of supervision under s65L. This section provides as follows:

**65L Family consultants may be required to supervise or assist compliance with parenting orders**

- (1) If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders:
  - (a) an order requiring compliance with the parenting order, as far as practicable, to be supervised by a family consultant;
  - (b) an order requiring a family consultant to give any party to the parenting order such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order.
- (2) In deciding whether to make a particular order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

Note: Sections 60CB to 60CG deal with how a court determines a child's best interests.

The orders His Honour made follow.



## **Orders**

### **Parental Responsibility**

1. IT IS DECLARED THAT the presumption of equal shared parental responsibility prescribed by the *Family Law Act 1975* (“the Act”) is rebutted in the best interests of the children A born ... May 2004 and N born ... October, 2005.
2. In respect of all “major long-term issues” as that expression is defined in the Act the mother shall, save as is hereafter specifically ordered, have all the duties, powers, responsibilities and authority which the mother and father would, save for this order, otherwise have had by law in relation to the children.

### **Live With**

3. The children shall live with their mother.

### **Section 65L Order**

4. Pursuant to s 65L of the Act, the Director Child Dispute services shall appoint a family consultant to supervise compliance with these parenting orders within the meaning of the said section, and to thereby give assistance to the father and paternal grandparents as to compliance with, and the carrying out of, these parenting orders and their obligations pursuant to these orders.
5. Without limiting the generality of this s 65L Order (or the occasions upon which the family consultant might choose to see the children or any or all of the parties), the family consultant appointed pursuant to the previous paragraph of this order shall:
  - (a) As soon as reasonably practicable after the making of these Orders, and prior to the first period of time provided for in these Orders, see the children in the presence of the parties (in such manner as the family consultant shall consider appropriate) for the purpose of explaining the terms of these orders to the children in an age-appropriate way and for the purpose of explaining the obligations cast upon the parties by these orders, and their rationale, as explained in the court’s Reasons for Judgment;
  - (b) After the first two periods of time between the children and as proximate to the third occasion as reasonably practicable (being the first occasion upon which the father shall spend time with the children) to again see the children in the presence of the parties (in such manner as the family consultant shall consider appropriate) in preparation for their first period of time with the father and to reinforce the obligations cast upon the parties by these orders.

- (c) After the period of time in January contemplated by the succeeding paragraph of these orders, to again see the children in the presence of the parties (in such manner as the family consultant shall consider appropriate) for the purposes of assessing the children's progress and the supervision of time by the grandparents.
- (d) Make and record observations of all matters considered relevant during each and all of such sessions conducted by the family consultant;
- (e) Consult with the Independent Children's Lawyer as considered appropriate;
- (f) Consult with the father's community corrections officer or such psychiatrist, psychologist, therapist or counsellor consulted by the father.

***Time With the Father and Paternal Grandparents***

- 6. The father shall not spend time with, nor communicate with, the children except in accordance with the succeeding provisions of these orders.
- 7. The paternal grandparents shall not spend time with, nor communicate with, the children save in accordance with the succeeding provisions of these orders.
- 8. Subject to the parties and children participating in the process contemplated by paragraph 5 of these orders, the children shall spend face to face time with the paternal grandparents from 9.00am to 5.00pm on a Saturday (or, in school holiday periods, another day of the week agreed in writing) nominated in writing by the mother not less than 21 days prior to its occurrence:
  - (a) In approximately late February, so as to be an approximate mid-point between the December / January and Easter school holiday periods;
  - (b) In the Easter school holiday period;
  - (c) In approximately late May so as to be an approximate mid-point between the Easter and June / July school holidays periods;
  - (d) Except in 2010, in the June / July school holiday period;
  - (e) In approximately mid-August, so as to be an approximate mid-point between the June/July and September / October school holidays;
  - (f) In the September / October school holidays;
  - (g) In approximately early November, so as to be an approximate mid-point between the September / October and December / January school holidays;
  - (h) In the first week of the December / January school holidays;
  - (i) In the last week of the December / January school holidays

7. Subject to the parties and children participating in the process contemplated by paragraph 5 of these orders the children shall in addition, spend face to face time with the paternal grandparents from 3.00pm until 6.00pm on Christmas Day in 2010 and between those hours each alternate year thereafter and from 9.00am to 12.00pm on Christmas Day in 2011 and between those hours each alternate year thereafter.
8. Subject to the parties and children participating in the process contemplated by paragraph 5 of these orders, the children shall spend face to face time with the father on the third and subsequent occasions provided for in paragraph 6 of these orders, and the occasions specified in paragraph 7 of these orders, with the whole of each and all such periods of time to be supervised by the paternal grandparents, who shall both be present for the whole of each and all such periods of time.

### ***Communication***

9. The father and grandparents shall be at liberty to send to the children by pre-paid post all such letters and cards as they might choose, provided that each and all are sent to the mother at the mother and children's residence and the mother who shall be at liberty to read any and all such communications.
10. The father shall be at liberty to communicate by telephone with the children between 6.30 pm and 7.00pm each Wednesday (or such other day as might be agreed), but subsequent to the s65L consultation contemplated by paragraph 5(a) of these orders.
11. The paternal grandparents shall be at liberty to communicate by telephone with the children between 6.30pm and 7.00pm each third Wednesday subsequent to the s65L consultation contemplated by paragraph 5(a) of these orders.
12. Neither the father nor grandparents shall communicate with the children by e-mail, facebook® or other form of computer communication, or by text message.

### ***Mandatory Injunctions***

13. Pursuant to s 68B of the Act and so as to give better effect to the parenting orders hereby made, each of the parties shall do all such things, sign all such documents and pay all such reasonable fees as might be required to:
  - (a) Participate in the s 65L process contemplated by paragraph 5 of these orders;
  - (b) Provide to the Independent Children's Lawyer, the name and other identifying details of any and all courses undertaken by any of them having as their focus sexual offending involving children (including offences involving child

- pornography) or which seek to provide an understanding of the nature of such offending;
- (c) Authorise the family consultant undertaking the process required by paragraph 5 of these orders and/or the Independent Children's Lawyer to discuss with, and receive information from, any psychiatrist, psychologist, counsellor or therapist consulted by any of the parties with reference to sexual offending involving children (including offences involving child pornography) or which seek to provide an understanding of the nature of such offending.
14. Pursuant to s 68B of the Act and so as to give better effect to the parenting orders hereby made, the father shall do all such things, sign all such documents and pay all such reasonable fees as might be required to authorise and request the community corrections officer monitoring his probation (or parole as the case may be) to provide to the family consultant undertaking the process required by paragraph 5 of these orders and/or the Independent Children's Lawyer details of all courses, treatment or counselling required of the father as a condition of his parole.
15. The mother shall keep each of the father and the paternal grandparents apprised of:
- (a) The children's residential address;
- (b) A telephone number upon which paragraphs 10 and 11 of these orders can be facilitated;
- (c) The name of any child care centre, kindergarten or school as the case may be at which the children or either of them is enrolled
16. The mother shall authorise any child care centre, kindergarten or school as the case may be to provide to the father all such information as to the progress of the children as the father might reasonably request and, failing the provision of any such specific authority by the mother, this order shall, of itself, be authority for the father to receive all such information.
17. That, at the earliest possible time or within 4 hours, each party shall inform the other party of:
- a) Any serious accident or the diagnosis of any significant medical condition suffered by either child;
- b) Surgery or the potential for same; hospitalisation or treatment for any serious injury, illness or disability pertaining to either child.

### ***Authorisation of Publication***

18. Pursuant to s 121(9)(g) of the Act an account of the proceedings in this case, namely these orders and the court's Reasons for Judgment accompanying same be authorised for publication, via the Independent Children's Lawyer, to:
- (a) The community corrections officer responsible for the father's probation (or parole as the case may be) or his or her duly authorised delegate;
  - (b) Any appropriately qualified person conducting any course or engaging in any treatment of, or consultation with, the father as a requirement of his parole;
  - (c) Any psychiatrist, psychologist, counsellor or therapist consulted by any of the parties with reference to sexual offending involving children (including offences involving child pornography) or which seek to provide an understanding of the nature of such offending.

### ***The Independent Children's Lawyer***

19. The Independent Children's Lawyer be discharged 12 months from the date of these orders.

### ***Liberty to Apply***

20. The Independent Children's Lawyer have liberty to relist this matter on the giving of 5 days notice in writing and, if reasonably practicable, any such further application be heard by Murphy J.

**IT IS NOTED** that publication of this judgment under the pseudonym *Harridge & Harridge* is approved pursuant to s 121(9)(g) of the *Family Law Act 1975* (Cth)

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