

forte family law

August 2006



Welcome to Forte Family Lawyers. We are delighted to announce that Forte Family Lawyers opened its doors on 8 May 2006. Forte Family Lawyers is a new practice committed to providing high quality, client-focussed family law advice and service.

The partners of Forte Family Lawyers are Jacky Campbell, Wendy Kayler-Thomson and Tony Salce. We have worked together for many years and are excited about the future of our new firm.

Our move was facilitated by the support of Beth Arundell, Luke Seivers, and Klara Englund who have joined the new firm as Associates. Our administrative assistants, Tanya Hanley, Marese Wilkinson, Sharon Cosgriff and Michelle Robinson have helped our clients with the transition.

We would like to welcome you to the first edition of Forte Family Law, our regular newsletter letting you know the latest developments in family law.

If you want to speak with us about our new firm, any of the articles, or if there is a topic you would like us to address in the next edition of Forte Family Law, we would love to hear from you.

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Shared Parental Responsibility Act

The Shared Parental Responsibility Act was passed by Parliament on 30 March 2006 and the majority of the reforms take effect from 1 July 2006. The reforms have been described by the Attorney General as the most "significant changes to the Family Law Act in more than 30 years".

The Act implements a number of the recommendations contained in the 2003 parliamentary report, "Every Picture Tells a Story". The reforms are designed to encourage cooperation between separated parents about the arrangements for the care of their children. There are also significant changes to the approach that Courts are required to adopt when making decisions in parenting cases.

The new laws apply to all applications made after 1 July 2006, as well as to cases already in the Court system.

Change of Terms

Just as we became used to them, the new Act replaces the terms "residence" and "contact", with the phrases "lives with" and "spends time with and communicates with".

Presumption of Equal Shared Parental Responsibilities

The Court must, when making parenting orders, apply a presumption that it is in the best interests of the child for the parents to have “equal shared responsibility” for the child. This means that parents will usually have an equal role in decisions about the major long term issues relating to their child. The presumption is rebuttable by evidence that equal shared parental responsibility is not in the child’s best interests. Also, it does not apply if there are reasonable grounds to believe a parent has engaged in family violence or child abuse.

Although the Act introduces a presumption of “equal shared responsibility”, it is not presumed that each parent will spend equal time with a child. However, a Court must consider the possibility of a child spending equal, or at least, substantial time, with both parents, provided that this is practical and not contrary to the “best interests of the child”.

The “best interests of the child” is still the most important factor for all decisions relating to children. There are two types of factors a Court “must” consider in determining the best interests of a child. Two factors have the status of “primary considerations”, whilst the rest are described as “additional considerations”.

The primary considerations are:

- the benefit to a child of having a meaningful relationship with both parents; and
- the need to protect a child from physical or psychological harm resulting from exposure to abuse, neglect or family violence.

There are 13 secondary factors. They include:

- the child’s views,
- the willingness and ability of the parents to encourage a close relationship with the other parent
- any other relevant matters.

Family Relationship Centres

Another part of the reforms is the rolling out of Family Relationship Centres and a requirement from 1 July 2007 that parties attend a dispute resolution practitioner before applying to the Court for parenting orders. Dispute resolution services include the new Family Relationship Centres but also accredited family counsellors and family dispute resolution practitioners. Over the next few years, 65 Family Relationship Centres will be established.

The first Family Relationship Centres in Victoria are located at Mildura, Sunshine, Frankston and Ringwood. In the future, there will be services at Ballarat, Berwick, Broadmeadows, Chadstone, Geelong, Greensborough, Melbourne, Morwell, Shepparton, Warrnambool and Wodonga.

The main exceptions to the requirement to attend a dispute resolution practitioner before going to Court are cases of family violence and urgency.

Effect of Changes

The practical impact of these changes will become clearer when the Courts starts to interpret the new legislation.

However, the main changes are:

- Greater encouragement to settle disputes through mediation and other dispute resolution services, before applying to the Court
- Where practical, and it is in the children’s best interests, children will spend more time with the traditional “contact” parent.

If you are unsure how the reforms affect you, you may want to use one of our services to clarify your position. Please see the Your Options for Advice.

Bankruptcy Legislation Amendment (Anti-Avoidance) Act 2006

The Bankruptcy Legislation Amendment (Anti-Avoidance) Act 2006 came into effect on 31 May 2006.

The Act aims to strengthen the claw back provisions of the Bankruptcy Act 1966, which allow trustees to recover property disposed of by a bankrupt prior to bankruptcy or acquired by a third party using the resources of a bankrupt.

Child Support Reforms

The first phase of a major overhaul to the Child Support scheme starts on 1 July 2006. There are three stages to the proposed reforms.

The major changes from 1 July 2006:

- The minimum weekly child support payment increases from \$5 per week to just over \$6 per week.
- The cap for high income earners reduces. Currently, income earned in excess of \$139,347 per annum is not taken into account by the Child Support Agency ("CSA") in arriving at a child support assessment under the formula. The cap falls to \$104,702, meaning that high income earners will pay less child support unless the carer successfully applies for a departure from the relevant assessment.
- A paying parent can meet part of their child support obligation by paying specified expenses for the children rather than paying cash to the other parent. The level of third party payments allowed increases from 25% to 30%. This means that a paying parent will be entitled to meet up to 30% of their child support obligation by paying expenses such as the child's school fees or essential medical costs. The remaining 70% must still be met by periodic cash payments.

From July 2008, the Government intends that a new formula will start.

Your Options for Advice

Shared Parental Responsibility & Child Support

The reforms will create a great deal of concern and uncertainty for many families, even those who thought that they had sorted out their arrangements.

We strongly recommend that you obtain advice on your particular circumstances. For example:

- If you have an existing child support arrangement and the payer is earning more than the new cap of \$104,702, or
- if you have existing parenting arrangements which are not working well and want to consider the risks and benefits of raising your concerns.

We can give you free telephone advice on either the child support or parental responsibility reforms for up to 15 minutes. We will let you know if and how the reforms affect you and whether you should take any further action or obtain further advice.

If you want more detailed advice, we will obtain further information from you and give you written advice and recommendations for \$275 including GST for each issue. Of course, if you prefer, you can make an appointment to see one of our lawyers.

You can contact us on:

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DISCLAIMER

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