

NAPCAN Position Statement

Background

The Attorney-General is currently considering a number of reports on the operation of the family law system and how the family law courts deal with cases involving family violence. NAPCAN has developed a position on the impact on children of the “shared parenting” provisions of the *Family Law Act 1975* (Cth).

The *Family Law Act* compels the Court to presume that “equal shared parental responsibility” is in the best interests of the child. Until recently, this has been interpreted as meaning equal *time* and equal *number of nights* sleeping at each parent’s house per fortnight. ¹

The judge can consider other factors, but the *main factor* is a presumption that equal shared parental responsibility is a good thing for all babies and children post-separation (unless there is proven evidence of violence).

NAPCAN position

NAPCAN strongly believes this current presumption is not in the best interests of all children and favours a child-focussed model. This requires a change in the law to allow for decisions to be made on a case-by-case basis.

1. NAPCAN supports simplifying the law to:
 - allow judges to weigh up a single list of factors when determining what is in the best interests of the child and;
 - discard the presumption that “equal” or “substantial and significant” time with each parent is always in the best interests of the child.
2. NAPCAN supports the Chisholm Report’s recommendations to protect children from violence.²

¹ NAPCAN is pleased that the full court of the Family Court of Australia recently clarified that “equal shared parental responsibility” does *not* mean equal time, and that “substantial and significant time” does not necessarily mean children swapping residences every 3 or 4 days, as this would not necessarily be in children’s best interests. See *Whisler & Whisler* [2010] FamCAFC 18 (17 February 2010), available at: <http://www.austlii.edu.au/au/cases/cth/FamCAFC/2010/18.html>

² Family Courts Violence Review, conducted by Professor Richard Chisholm AM, available at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyCourtsViolenceReview