**1.1.P.17 Parental responsibility**

**Definition**

For the purposes of Family Assistance and the *Social Security Act 1991*, and under section 61B of the *Family Law Act 1975*, parental responsibility means all the duties, powers, responsibilities and authority that parents have, by law, in relation to their children.

According to section 61C of the *Family Law Act 1975*, both parents of a child aged less than 18 years, have parental responsibility (subject to court orders) for their child. This responsibility continues, despite any changes in the nature of the parental relationship of a child (i.e. parental responsibility will not change if a child's parents become separated, or if one or both parents remarry).

A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any) expressly provided for in the order; or necessary to give effect to the order.

**Act reference:** Family Law Act 1975 refer to sections 61B Meaning of parental responsibility and 61C Each parent has parental responsibility (subject to court orders)

<http://guidesacts.fahcsia.gov.au/guides_acts/fag/faguide-1/faguide-1.1/faguide-1.1.p/faguide-1.1.p.17.html>

*Family Law Act Definitions*

61B Meaning of *parental responsibility*

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

61C Each parent has parental responsibility (subject to court orders)

(1) Each of the parents of a child who is not 18 has parental responsibility for the child.

Note 1: This section states the legal position that prevails in relation to parental responsibility to the extent to which it is not displaced by a parenting order made by the court. See subsection (3) of this section and subsection 61D(2) for the effect of a parenting order.

Note 2: This section does not establish a presumption to be applied by the court when making a parenting order. See section 61DA for the presumption that the court does apply when making a parenting order.

Note 3: Under section 63C, the parents of a child may make a parenting plan that deals with the allocation of parental responsibility for the child.

(2) Subsection (1) has effect despite any changes in the nature of the relationships of the child’s parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re‑marrying.

(3) Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

Note: Section 111CS may affect the attribution of parental responsibility for a child.

61D Parenting orders and parental responsibility

(1) A parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.

(2) A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any):

(a) expressly provided for in the order; or

(b) necessary to give effect to the order.

61DA Presumption of equal shared parental responsibility when making parenting orders

(1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child’s parents to have equal shared parental responsibility for the child.

Note: The presumption provided for in this subsection is a presumption that relates solely to the allocation of parental responsibility for a child as defined in section 61B. It does not provide for a presumption about the amount of time the child spends with each of the parents (this issue is dealt with in section 65DAA).

(2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

(a) abuse of the child or another child who, at the time, was a member of the parent’s family (or that other person’s family); or

(b) family violence.

(3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.

(4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child’s parents to have equal shared parental responsibility for the child.

61E Effect of adoption on parental responsibility

(1) This section applies if:

(a) a child is adopted; and

(b) immediately before the adoption, a person had parental responsibility for the child, whether in full or to a limited extent and whether because of section 61C or because of a parenting order.

(2) The person’s parental responsibility for the child ends on the adoption of the child, unless the adoption is by a prescribed adopting parent and leave was not granted under section 60G for the adoption proceedings to be commenced.

61F Application to Aboriginal or Torres Strait Islander children

In:

(a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or

(b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child;

the court must have regard to any kinship obligations, and child‑rearing practices, of the child’s Aboriginal or Torres Strait Islander culture.