

But my child wants to live with me: The role of children's views in family court custody decisions

One of the most common questions family lawyers get asked is how much say children have in deciding which parent they'll live with after separation. Many parents want to know if their child can decide where to live, especially when that child is expressing a strong preference or view.

The reality is more complex than many people think. While Australian family law takes children's views into account, children do not get to decide their custody arrangements and a child's view is not the deciding factor in determining custody arrangements. The decision-making process balances their views and wishes with several other important factors, most importantly, what is in their best interests.

Age and maturity

The weight given to a child's preferences usually increases with age and maturity. While there's no "magic age" when a child's wishes are more carefully considered, the Court generally recognises that:

- Younger children (under 10) have limited understanding of the complex factors involved in parenting arrangements, and, even in circumstances where they express a wish, a younger child will usually have a very limited understanding of the long-term consequences of that

wish; and

- Older children and teenagers will usually have a deeper understanding of the situation and a more reasoned opinion. Therefore, it is appropriate for the Court to consider those opinions more carefully, particularly when those views show the children have thought carefully about their situation.

How children's voices are heard

Children do not speak directly to judges in family court. Instead, their views, wishes and experiences reach the court through appropriate channels, for example:

- **Family Reports** prepared by court-appointed psychologists or social workers who spend time with families to understand the child's situation. The report writer may talk with a number of people involved in the children's lives including the child's extended family or the child's school;
- **Independent Children's Lawyers** (ICLs) who represent the child's best interests rather than their stated wishes alone; and
- **Professional assessments** from counsellors or psychologists who may have worked with the child.

These professionals use age-appropriate methods to understand the child's genuine feelings, assess their level of understanding, and communicate this information to the Court in a balanced way. It is also their role to identify whether someone (usually a parent) is influencing a child's view and the effect of that influence on the overall parenting proceedings.

When children refuse contact

When a child refuses to spend time with one parent it can be challenging, particularly if there is a court order in place because parents remain legally obligated to follow court orders, regardless of the child's objections.

In these situations where a child is refusing to spend time with their other parent, it's important to:

- Understand the reasons for the refusal;
- Seek legal advice as soon as possible and before altering any arrangements (particularly if there is a court order to ensure you are not contravening the orders);
- Consider appropriate supports to put in place for the child like family therapy;
- Consider whether mediation will assist; and
- Apply to vary court orders if circumstances have significantly changed. It is important to understand what a significant change in circumstances is before applying to the Court to vary existing orders.

Finding the right balance

Children are impressionable. Advocating for your children is important but simply following their wishes could result in a situation where their living arrangements change weekly and that is not sustainable long term. Getting the balance of listening to and supporting your children with keeping

them safe and ensuring they are thriving is complex. So while your child's wishes matter in family law proceedings, the Court's paramount consideration remains their overall best interests. This holistic approach ensures decisions support their safety, wellbeing, and healthy development in both the short and long term.

If you're navigating parenting arrangements following separation, our family law team at Andersons Solicitors can provide expert guidance on how your child's wishes might be considered within the broader legal framework. We'll help you understand your options while keeping your child's best interests at the heart of the process.

Contact Andersons Solicitors for compassionate advice that respects both your parental rights and your child's needs.