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LawTalk Blog



How do we sort out the living arrangements of the children after separation?

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After separation parents need to work out a plan for how their children will live. For some people these arrangements can be worked out between them amicably and sensibly. For others it can be a difficult, stressful and often a very expensive process. It may be because one party is being difficult or obstructive or it may just be that the answer isn't clear.

In Australia, the term "custody" is no longer used. Our law talks about who has [parental responsibility](#), who the child will live with and spend time with.

Parents, especially those that have separated, often think differently about what is best for their children and can become caught up in their angry and hurt feelings. This can cause them to lose focus on what is best for the children.

The law has developed on an expectation that parents will cooperate with each other to try and work out what is best for their children and as a result has set a requirement for parents to attend [Family Dispute Resolution](#) (FDR) prior to issuing Court proceedings.

The aim of FDR is to assist parents to resolve matters between themselves with some assistance from a neutral third party to reach an agreement that works best for the children. The foundation of this is that the parents know their children best and that they should be able to work out the most appropriate living arrangements for the children.

The alternative is to ask the court to make such a determination, which takes the decision making out of the parent's, and in some cases, the children's hands.

The primary focus is on the child's best interests not those of the parents or any other parties.

Some children live equally with each parent, for example they might live with their parents one week each. This arrangement requires a high degree of cooperation between parents and the need for parents to put their own feelings about each other aside. Parents have to keep in touch and up to date about their children's lives. This is referred to as "co-parenting". If the parents cannot co-parent, an equal shared care arrangement for the children is unlikely to be effective.

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In some situations, such as where there is family violence, urgency or FDR has failed there is little choice but to proceed to Federal Circuit Court of Australia to ask the court to make the decision about the living arrangements of the children.

If the matter resolves by agreement it is important that the agreement is made into a Parenting Plan or Consent Order so that the parties are clear about what their rights and responsibilities are. This provides stability and certainty for the children and prevents parents straying outside the terms of the agreement. It also helps to provide for protection to a parent if the other party chooses to breach the agreement.

We recommend that you obtain advice from an experienced Family Law solicitor before attending FDR or agreeing to a parenting plan. At Andersons, we can help you work out some suitable and practical proposals for the living arrangements of your children so that you will be prepared for the FDR.

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