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LawTalk Blog



When can children decide which parent they want to live with?

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It is understandable that many of our clients ask us this question after separating from their partner; when can my child decide who they want to live with?

The answer, according to the *Family Law Act 1975* and the current court judgments, is that it really depends on each individual case and the children involved.

All cases related to children are required to be determined in accordance with what is considered to be in the "[best interests of the child](#)". What is considered to be in their best interests will be determined by a number of factors, including the child's wishes.

How much weight is to be given to the child's wishes in making a decision about where they are to live will depend on the child's age and maturity, as well as their level of understanding.

The Family Court generally takes the view that as a child gets older they will become more mature and they will have a greater understanding of what is best for themselves in terms of their living arrangements. As a child gets older they are also thought to have a better grasp of the consequences of their decision about where they want to live including the impact of that living arrangement on their relationship with each of their parents and other caregivers in their lives and the effect on their relationship with their siblings.

"Some people suggest that generally as a child becomes a teenager they should then have a greater say about where they want ..."

Some people suggest that generally as a child becomes a teenager they should then have a greater say about where they want to live and this is generally true to some extent but is particularly dependent on that child's level of maturity.

In the Family Court system it is often the case that an [Independent Children's Lawyer](#) (ICL) will be appointed to assist the court in advocating what is in the child's best interests from an independent point of view.

"The Family Court Judge hearing the matter in the first instance found against their wishes and determined that they should return to live in Australia."

The High Court of Australia has recently dealt with the issue of children's wishes in the case of [Bondelmonte v Bondelmonte & Anor \[2017\] HCA 8](#). In this case a father breached court orders to retain two Australian boys aged 15 years and 17 years in the US. The boys wanted to remain living with their father in the US and not return to their mother. The Family Court Judge hearing the matter in the first instance found against their wishes and determined that they should return to live in Australia. The matter then went to the Full Court of the Family Court which confirmed the decision and dismissed the father's appeal. The father appealed again to the High Court of Australia which ultimately confirmed the decision of the original judge that the children had to return to Australia.

This court outcome has brought into question the weight that should be given to childrens' wishes, with [some lawyers suggesting that it supports the notion that children should not decide which parent they live](#) with regardless of their age.

I would suggest however that this decision was made for specific reasons in that the children had been taken to the US on a holiday with their father and he had then told the mother that they would not be coming back to Australia. The father was acting in breach of Family Court orders and the court was concerned that the childrens' wishes had been unduly influenced by the father.

"In my view this case in fact confirms that while childrens' wishes will be considered by the court those wishes will not always be followed..."

In my view this case in fact confirms that while childrens' wishes will be considered by the court those wishes will not always be followed and it remains the case at law that each situation will need to be determined on the basis of the facts of the case and in accordance with what is found to be in the childrens' best interests.

You may like to view our video ["Family Law – What are the Best Interests of the Child?"](#)

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