



CHILD CUSTODY

When parents separate, children are often caught in the middle. Reaching an agreement with your former spouse with respect to the arrangements for your children may be stressful, particularly where parental conflict is high. Our family law team believe that separation doesn't have to be harmful for children in the long run, if managed well.

Fortunately, Australian family law is child focussed and what many parents going through separation may not know is that the law encourages parents to:

- Agree about matters concerning their children;
- Take responsibility for their parenting arrangements and for resolving parental conflict;
- Minimise the possibility of present and future conflict by using or reaching an agreement (*see Parenting Plan below*);
- Have regard to the best interests of their children as the paramount consideration when reaching an agreement; and
- Use the legal system as a last resort.

This should be kept in mind during the separation process.

Our Approach

Our solicitors are dedicated to bringing about a swift and effective resolution to your family law matter. We do not promote or encourage protracted matters (though this may be out of our control at times) as we are conscious of the sensitive nature of family law matters particularly when the subject matter in dispute is children.

We take a collaborative approach to family law matters and encourage the use of alternative dispute resolution processes where appropriate.

When making arrangements for your children, it is important to consider:

- Where your children will live.
- How much time they will spend with each parent.
- How much time they will spend with other significant family members i.e. grandparents, cousins etc.
- Special occasions such as Christmas, Easter, birthdays, Mother's Day and Father's Day.

This may seem complex, but it is vital that your children's best interests are taken into account. If you are considering separating you should consult a family law solicitor first to discuss things such as yours and your children's rights as well as your obligations as a parent.

Parenting Plans

The family law system encourages parents to work out arrangements for their children without the need of Court intervention.

Although you are not legally required to, if appropriate, it is a good idea to consider entering into a parenting plan with respect to the parenting arrangements regarding your children.

A parenting plan is a voluntary agreement that sets out the day to day responsibilities of each parent, the practical considerations of a child's daily life as well as how parents will agree and consult on important long term issues about their children.

Although it is not binding on the parties (and thus not legally enforceable) it is a good way to clarify the obligations of each parent and to create stability for the children, which is vital.

Please contact us if you are considering entering into a parenting plan.

Consent Orders

If you want your parenting agreement to be binding, then you may seek to formalise your agreement by applying for consent orders in the Family Court. Consent orders have the same legal effect as if they had been made by a judicial officer after a court hearing. The Court must be satisfied that the orders you ask for are in the best interest of the child.

What Orders can a Court make?

If you and your former partner are unable to reach an agreement with respect to your children, either of you may make an application to the Court to have your matter resolved. This essentially means the Court will make parenting orders on your behalf.

The Court has the power to make orders with respect to:

- Who the children will live with.
- When the children will spend time with the other parent.
- The responsibilities of each parent.
- Changing or varying previous orders.

Prior to applying to the Court, you must make a genuine effort to resolve the dispute by family dispute resolution. In some circumstances, this may not be appropriate for example matters with allegations of family violence or child abuse.

Once an order is made, the Court will only change the order if there is a significant change in circumstances.

The Child's Best Interests

In deciding whether to make a particular parenting order in relation to a child, a Court must regard the best interests of the child as the paramount consideration.

In determining what is in the child's best interests the Court will consider, amongst other things, the benefit to the child having a meaningful relationship with both of the child's parents and the need to protect the child from physical or psychological harm.

In most cases, the court presumes that it is in the child's best interests to have contact with both parents and for both parents to have equal responsibility. This is unless there has been some abuse or violence within the family.

When a Court is considering what is in the child's best interests, they will take account of:

- The child's views (depending on the age and maturity of the child).
- The child's relationship with its parents.
- How willing both parents are to play a part in the child's upbringing.
- The practicalities of both parents seeing each child.
- The capacity of each parent to care for the child's intellectual and emotional needs.
- The gender, maturity, lifestyle and cultural background of the parents and the child.
- The responsibilities both parents have shown to parenthood.
- Any history of violence, abuse or neglect.

Family Violence and Parenting Matters

In situations where there are allegations of family violence towards a child in parenting disputes, the Court must consider the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. When making these considerations the Court places greater weight on the need to protect the child.

The Court will often consider orders for supervised time in these circumstances. This means that a parent will be able to have access to their children under the supervision of a third party (agreed to by the parties) or a Court approved agency.

If you require advice or assistance with respect to child custody/ parenting matters or for assistance with any other family law matter please contact our Family Law Associate, Monique Loveday via email at monique@szabosolicitors.com.au or contact (02) 9281 5088.

This information is general in nature and is not intended to be relied upon as legal advice. We urge that you obtain legal advice before acting upon anything you read in this article.