

Children's Views: When and how are they Considered?



Article by Townsville Family Lawyer, [Courtney Aitken](#)

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Context

When parents have separated and need to make arrangements for their children, I am often asked by clients if the children get a say in their living arrangements.

Working out what time children spend with each parent can be a very difficult part of a separation. It is understandable that what the children think, is one of the things parents think about when trying to work this out.

It is ideal to work out arrangements and reach an agreement as soon as possible.

Sometimes, parents are able to agree on how this will work best for their children, and they work out arrangements between themselves. Sometimes, parents can reach an agreement after receiving some assistance from a Mediator or their respective Family Lawyers.

If Parents cannot reach an Agreement:

Other times, parents cannot agree, and one parent may end up commencing Court proceedings so that a decision can be made by a Judge or a Registrar of the Court. If parents end up in Court proceedings, a Registrar or Judge (who we refer to as the Court) will decide the children's living arrangements.

Do the Children have a say in their Living Arrangements?

The answer to this question is not black and white.

The *Family Law Act* requires the Court to consider various things when deciding care arrangements for children. One of *many* things the Court must consider is 'any views expressed by the child'.

The law does not state a specific age at which children can decide.

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Will the Court Speak to the Children?

It is very unusual for the Court to speak to children directly about their views, or for children to attend any Court events.

How is the Court Informed about the Children's Views?

Usually, evidence of the children's views comes from a report written by a Psychologist or Social Worker who has met with the children, as organised by the Court, or both parents.

These reports are called a *Child Impact Report*, a *Child's Wishes Report*, or, a *Family Report*. There are useful resources on the Court's website to explain to parents how children are interviewed when these reports are being prepared, and how to explain this process to children.

How does the Court Consider the Children's Views?

The Court does not just consider children's views on their *face value*. For example, if a child says 'I want to live with Mum!' or 'I want to live with Dad!' the Court does not stop there. The *Family Law Act* states the Court must not just consider what the view is, but the child's maturity or level of understanding as to what that view means.

Maturity and Understanding

The independent reports referred to in the section above, often provide the Court with a lot of insight into the children's maturity and level of understanding. For example, a child may hold a view that they do not want to live or spend time with one parent because that parent makes them eat their vegetables or limits their screen time! If that is the case, it is likely that the child's view, will not be considered as mature.

In other cases, a child may hold a view that, based on the report, is considered to be mature and well thought out. If that is the case, that child's views may be given a lot of weight by the Court.

Influenced by the Parent

Another important factor that the Court often considers is whether one parent has influenced the child's view. If there is evidence that a child has been influenced or pressured to hold a certain view, it may be that the Court will not take the child's view into account as they do not think that is truly the child's view.

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Taking the Pressure off the Children

Working out care arrangements for children can be very stressful and difficult.

It is important to not place pressure on children as they are already going through a tough time too. Working out care arrangements are essentially adult issues that children should not be burdened with.

Every Situation is Unique

We always recommend that you see an experienced family lawyer so you can discuss your situation and obtain customised advice about how the law specifically applies to you.

O'Shea Dyer Townsville has experienced lawyers who practice exclusively in Family Law

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