
Child Custody

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The law abolished the concept of 'child custody' and does not make any distinction between the rights of fathers and mothers. Instead, the 'best interests' or welfare of the child is the paramount consideration that the Court takes into account in determining 'child custody', that is who the child will live with and spend time with.

While the law does not guarantee an equal-shared parenting arrangement in every matter, both parents have the responsibility for the care of their children. If the Court decides that an equal-shared parenting arrangement is not in the best interests of the child, the Court must consider ordering significant or substantial time to the non-resident parent.

The question of how much time a child should spend with both parents is determined by what is in the 'best interests' of the child. This is achieved by having regard to the two 'Primary Considerations', that is:

- Whether there is any benefit to the child having a meaningful relationship with both parents; and
- The need to protect the child from physical or psychological harm, from being exposed to abuse, neglect or family abuse.

When considering 'child custody', the Court will always prioritise the child's safety and well-being if it suspects that the child is at risk of domestic violence or abuse and accordingly, will make appropriate parenting orders.

In determining what is in the 'best interests' of the child, the Court gives consideration to additional factors such as:

- Any views expressed by the child and the relevant weight to be given to their views based on their maturity and level of understanding;
- The nature of the relationship with each parent and other persons such as grandparents or a relative of the child;
- The likely effect of any changes in the child's circumstances, including the likely effect of separation from either of their parents;
- Any practical difficulties or expenses of a child spending time with each parent; and
- The presence of family violence or if any family violence orders in place.

To conclude, there are no pre-determined rules about who should have 'custody' of a child post-separation. Rather, 'child custody' is determined on a case-by-case basis, taking into account individual circumstances that must be considered to decide what is in the 'best interests' of the child.

For advice about negotiating child custody arrangements contact us on [1800 300 170](tel:1800300170) or email us at familylaw@matthewsfolbigg.com.au



Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.