



## Are the views of the child considered in family law proceedings

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

When making Parenting Orders in relation to a child, [section 60CA of the Family Law Act](#) requires the Court to regard the best interests of the child as the paramount consideration. In doing this, the Court may give consideration to the views of the child. Factors such as the child's maturity or level of understanding will inform the Court as to the weight, if any, it should give to the views of the child.

Every family matter is different, and whilst sometimes a child's views will carry a significant amount of weight, there will also be circumstances in which the child's views are given no weight at all.

## How much consideration is given to the child's views in family law?

While a child's views will be taken into account (where they have been expressed), it is important to understand that there is no obligation for the Court to make Orders that are consistent with those views and the child. Importantly, the child is not responsible for determining their own care arrangements.

Whilst obtaining a child's views can sometimes assist the Court, it is important that children should not possess, or feel as if they possess, any decision-making authority concerning their parents' separation.

Once a child's views have been obtained, the Court has the discretion to determine how much weight (if any) should be attached to those views. In some circumstances, the child's view will carry little weight because of the child's age or risk factors that may be present.

In other circumstances, the child's views will be weighted heavily, particularly when it comes to a child in their teenage years who has expressed strongly held views.

Whilst the Court may consider a particular living arrangement (for children of the relationship) less than desirable for the child, if proposed Orders are going to ultimately be unenforceable because the child refuses to adhere to them, it is unlikely that they will be made.

## When is it inappropriate for the Court to consider the views of the child?

There are certain circumstances where it may be unsuitable for the Court to take the child's view into account.

Some common instances include when the child is too young, lacks the maturity to comprehend the matter adequately, or is incapable of making an informed decision. For example, it would not be suitable for the Court to consider the views (or inferred views) of an infant or toddler, as they are too young to express their opinions.

There is no predetermined age at which the child's opinions become relevant. A prevalent misconception in family law is that once a child attains their teenage years, the Court will only make orders aligned with the child's views. Whilst greater weight may be afforded to an older child's views in certain circumstances, it is important to understand that this is not always the case.

## How does the Court obtain the child's views?

A child does not express their views directly to the Judge or any other Judicial Officer in Family Court proceedings (although this may occur in rare circumstances). Instead, the child's views are obtained through either a family consultant undertaking a Family Report or through an [Independent Children's Lawyer](#) (ICL).

## Family Reports and Child Impact Reports in family law proceedings

[Section 62G of the Family Law Act](#) enables the Court to order a Family Report to be prepared by a family consultant. The purpose of these reports is to assist the Court in determining what arrangements will be in the best interests of the children.

The two primary report types are:

1. Child Impact Reports, which are shorter reports usually ordered early in proceedings, and
2. Family Reports, which are more comprehensive reports generally ordered for matters at the final hearing stage.

Family consultants often conduct a series of interviews over one or more days. They conduct individual interviews with each parent and may also interview other significant individuals (such as adult siblings, step or half-siblings, partners, or [grandparents](#)).

Children are typically seen separately from adults if they are old enough and mature enough. The children are given an opportunity to express their views and desires but are not compelled to do so if they choose not to.

The family consultant may also observe interactions between the children and each parent (and/or other significant individuals) in separate observation sessions. These interactive sessions are common when the children are still quite young but may also occur with older children depending on the case's circumstances.

## Independent Children's Lawyers

An Independent Children's Lawyer (ICL) is appointed by the Court to represent the child's interests in family law proceedings.

Section 68LA (2) of the Act provides that the role of the ICL is to:

1. form an independent view of what is in the child's best interest on the available evidence;
2. act in what the ICL believes to be the child's best interests;
3. make submissions for the Court to act in a particular way in the best interest of the child;
4. represents the child's interest (not the child);

For proceedings instituted on or after 6 May 2024 or beforehand where a final hearing has not commenced, ICLs are required to meet with the child and give the child the opportunity to express their views. The ICL must ensure that any views expressed by the child in relation to matters to which the proceedings relate are fully put before the Court.

The ICL is not required to perform a duty if the child is under 5 years of age or the child does not want to meet the ICL or express their views. An ICL is not required to perform a duty if there are exceptional circumstances that justify it. This includes but is not limited to circumstances which would expose the child to a risk of physical or psychological harm that cannot be safely managed or would have a significant adverse effect on the wellbeing of the child (new subsection 68LA(5C)).

An ICL thoroughly reviews the evidence from all parties and provides the Court with a recommendation regarding what is in the child's best interests.

## Get help from a family lawyer

Are you navigating parenting arrangements following a separation and require support to ensure the children's best interests are prioritised? Our team of family lawyers can provide you with the advice and support that you need to guide you through the family law process and achieve a resolution that best promotes the best interests of your child.

## Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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