

A photograph of a man with short grey hair and glasses, wearing a striped shirt, smiling broadly while holding a young boy on his shoulders. The boy is wearing a plaid shirt and also smiling. They are outdoors, with a white fence and greenery in the background.

PARENTING ORDERS AND CHILD CUSTODY

Common Questions

What happens if my child does not want to spend time with the other parent?

Sometimes, a child will express the wish that they do not want to spend time with the other parent, or do not want to spend as much time with that parent as the parent might like. It is well established that the opinion of the children is not the overriding reason to prevent a parent from spending time with their children. It is not for children to decide whether they do or do not want to spend time with their parents.

Instead, the answer to this question will depend on numerous factors, the most important of which will be the reason why thy child is expressing that view.

If, for example, the child is expressing that view because the child is subject to family violence (which includes both physical and verbal violence) or child abuse, this will be a powerful factor in whether the Court determines that the child should not spend time with the other parent because it is not in the child's best interests to do so.

If however the child is expressing that view because a parent is denigrating the other parent regularly in the presence of the child and the child has formed a negative view of the other parent as result, this will not be a legitimate reason for the Court to restrict the other parent's time with the child.

Contravening Court orders is a very serious matter and so you should not prevent the other parent from spending time with the child unless there are very good reasons for doing so. Our experienced family lawyers can give you advice as to whether you have a reasonable and justifiable basis for doing so.

Do I need my partner's consent to relocate with our children?

In some cases, you will require consent and in other cases you will not depending on your specific circumstances.

If you plan to relocate to a new residence that is not a long distance from your existing residence, even though this may be inconvenient for the other parent, if it does not impact on other aspects of the child's life such as schooling or on the time that the other parent spends with the child, you are unlikely to require the other party's consent.

However, if you intend to move overseas, interstate or a long distance away, which in turn negatively affects the other parent's time with the child or which will result in a contravention of Court orders, you will either need the other parent's consent or an order of the Court before you relocate.

Please note, the above information should not be relied upon as legal advice or as a substitute for legal advice. If you require legal advice, please contact Lawpoint.

Parenting Orders And Child Custody: Common Questions

The same test is applied by the Court in relocation cases as is applied in respect of parenting matters generally; is it in the best interests of the child for you to relocate as planned?

What you will need to establish is that the child's interests and needs will be better met by the relocation. One of the main concerns for the Court is ensuring the child maintains a meaningful relationship with both parents.

The Court will consider all options, and may for example, allow you to relocate and make orders relating to the time the other parent spends with the child or may order that the child instead live with the other parent (and therefore not relocate even though you are relocating) and make orders relating to the time you will spend with the child.

What can I do if I am concerned that the other parent may take my child overseas without my consent?

If you do not consent to the other parent taking your child overseas, the other parent will need a Court order to do so (assuming that there are no existing orders in place permitting this).

From a practical point of view, both parties must sign a passport application for a child, so you can simply refuse to sign the application for a passport, which will practically prevent international travel by your child. You can also lodge a Child Alert Request at any Australian Passport Office.

However, in many instances, the child may already have a passport. If you hold a genuine concern that the other parent may take your child overseas without your consent and worse still, relocate overseas permanently with the child, our experienced family lawyers can apply to have your child listed on the Australian Federal Police "airport watch list".

Once on the list, it will not be possible to remove the child from Australia. If the other parent attempts to leave Australia with the child, the AFP will be notified and the child will be prevented from leaving Australia without a Court order permitting it.

Do I need the other parent's consent to change our child's school?

Unless there is an order in place giving you sole parental responsibility for the long term important decisions affecting your child (including schooling), then you will need the consent of the other parent to change your child's school because parents share responsibility for these decisions.

You are required to consult with the other parent and make a genuine effort to reach a mutual decision in relation to schooling. Sometimes, mediation can assist the parents to reach an agreed position.

If you cannot agree, you can apply to the Court for an order permitting you to enrol the child in the school of your choice. The Court may or may not grant this request and may do so with or without conditions.

I don't like the other parent's new partner. Can I stop them spending time with my child?

In short, no, not unless there is a legitimate reason why doing so would not be in the best interests of the child.

Just because you do not get on well with the other parent's new partner, does not mean that you can prevent them from spending time with your child. Part of the expectation that parents must focus on the best interests of the child and promote a meaningful relationship with both parents, is that they must recognise the reality that one or both parents may re-partner and promote the relationship with that new partner and the new family unit.

Please note, the above information should not be relied upon as legal advice or as a substitute for legal advice. If you require legal advice, please contact Lawpoint.

Parenting Orders And Child Custody: Common Questions

However, there may be circumstances where your concerns are legitimate. For example, where the other parent's new partner has a history of domestic abuse, is a drug user or is engaging in conduct which exposes your child to abuse, neglect or other harm. Where it can be shown that it is not in the best interests of the child to be in the presence of that person, the Court may make an order preventing that person from spending time with the child or by putting protective measures in place such as supervision orders.

It is important to note that the onus of proving such allegations rests on the parent making them. It will not be enough to simply make such allegations. You must have sufficient evidence to convince the Court that your allegations are true.

Is the law biased against fathers?

The short answer to this question is no. The *Family Law Act 1975* does not permit the Court to discriminate against fathers. In reality, mothers often obtain orders that are more favourable because prior to the Court process, the mother was the primary caregiver for the child and therefore the Court deems that it is in the child's best interests for that primary caregiving relationship to remain in place.

Where the father has had a significant role in the child's life prior to the Court process, the Court is likely to maintain that involvement, unless it is not in the best interests of the child to do so.

What is family dispute resolution?

Family dispute resolution is a confidential process whereby a trained Family Dispute Resolution Practitioner independently attempts to help parents navigate disputes and reach agreement on child custody arrangements.

The law requires parents who have a dispute about child custody and related parenting issues to make a genuine effort to try to and reach agreement via family dispute resolution before filing an application for parenting orders in Court.

This requirement applies any parent wanting to file an application with the Court, unless there is a permitted exception.

Section 60I(9) of the *Family Law Act* lists the exceptions to the requirement to attempt family dispute resolution before making an application. Examples of exceptions are:

- where a person is applying for procedural orders, interim orders or consent orders.
- where the matter is urgent.
- if the court has reasonable grounds to believe that:
 - family violence or child abuse has occurred, or
 - there is a risk of violence or child abuse if there was to be a delay

Unless one of the permitted exemptions applies, a party wishing to apply to the Court must file a certificate from a family dispute resolution practitioner. The certificate is issued under Section 60I of the Family Law Act 1975 and is commonly known as a Section 60I Certificate.

Anything that is said during family dispute resolution conducted by an accredited FDR practitioner, is confidential and is not admissible in any Court proceedings. This allows parents to openly and honestly discuss all issues relevant to the dispute, without the threat that something they say may later be used against them in Court.

Please note, the above information should not be relied upon as legal advice or as a substitute for legal advice. If you require legal advice, please contact Lawpoint.

Parenting Orders And Child Custody: Common Questions

Do I need a child custody lawyer?

Strictly speaking, no. But our experienced child custody lawyers have extensive experience in matters like yours and can give you advice on the best way to achieve the outcomes you are looking for.

We can also provide you with practical advice on how to resolve disputes so as to avoid the stress and cost of the Court process. We work with you to try and resolve your dispute by negotiation, as quickly and as cheaply as possible.

Where an agreement is not possible and Court proceedings are unavoidable, we utilise our extensive experience to present your case to the Court in the best possible way to obtain the orders you seek.

Throughout this process, we treat you with respect, dignity and empathy because we understand just how stressful family law proceedings can be.

How much will it cost to engage a child custody lawyer?

The cost will depend on the lawyer you engage. Different lawyers have different hourly rates, depending on their level of experience. Lawyers with the same levels of experience can also charge significantly different hourly rates. More expensive is not necessarily better.

You should ask questions of your lawyer so that you understand exactly what costs will be involved and what their level of experience is, especially in matters similar to yours.

Our family law solicitors have extensive experience in all aspects of family law including child custody matters. We offer an initial free telephone consultation to allow you to ask questions and get to know us a little better.

Every family law matter is different and therefore each matter will have different legal costs depending on the specific circumstances of each case. Matters that can be resolved through negotiation will have much lower costs than those that require court proceedings to be commenced.

Although we don't provide a guaranteed quote for family law matters, we are able to give you a fee estimate as part of our fee agreement. This estimate is based on a number of factors, including the instructions you provide us about your circumstances and what you are hoping to achieve. This way you have clear, upfront estimates of the costs that you are likely to incur.

Our approach to legal costs is that we provide high quality family law advice as cost effectively as possible. Our aim is to help you avoid the costs of Court proceedings so we focus heavily on a negotiated resolution that still achieves the outcomes that you seek.

Contact Us

Have a family law matter you need help with?
Contact us now.

+ 02 9517 1887

reception@lawpointlawyers.com.au

lawpointlawyers.com.au

Please note, the above information should not be relied upon as legal advice or as a substitute for legal advice. If you require legal advice, please contact Lawpoint.