

Best interests of the child

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation.

Mediation in the Family Court

The Family Court provides a number of dispute resolution services to help you resolve family differences without a court hearing. The aim of these services is to assist people to come to an agreement about matters in dispute or unresolved after a separation or divorce. Generally dispute resolution sessions will follow a process of cooperative problem solving and can cover either children's or financial issues or both.

Mediation for children's issues are only conducted by a court mediator/counsellor who is a trained social worker or psychologist. If it is a financial matter, a registrar may conduct the session.

Mediation/counselling sessions in children's matters can help separated couples to settle disputes about:

- living arrangements
- contact arrangements
- best management of contact changeover.

They will also help you to:

- decide which areas are in dispute
- explore each person's needs and interests
- explore possible safe solutions, taking one problem at a time
- select the most suitable solution, taking into account the age of your children and your individual circumstances
- clarify your agreement/outcome
- identify potential risk to children and families.

To help you make decisions when you are in mediation, you should have a good understanding of the 'best interests of the child' principles as they will help guide your decisions.

What are the 'best interests of the child'?

The term "best interests of the child" is one which has a particular meaning in family law when making arrangements for children. It is the most important thing to think about when making decisions about children.

Family law considers children's best interests are met by:

- Protecting children from physical or psychological harm, abuse, neglect or family violence (including being exposed to those things).
 - Ensuring that children have the benefit of both of their parents having meaningful involvement in their lives to the extent possible within the best interests of the child.
 - Ensuring children receive proper parenting to help them reach their full potential
- Ensuring parents fulfil their responsibilities for the care, welfare and development of their children.

How does the Family Court decide what is in the best interests of my child?

When working out what is in your children's' best interests, the most important things that the court looks at are:

1. The need to protect children from physical and psychological harm, abuse, neglect or family violence that has been directed at them or that they have seen or heard; and
2. The benefit to the children of having a meaningful relationship with both parents.

Whilst the Family Court consider that it is important that the child has a meaningful relationship with both parents, it will always place greater weight on the need to protect children from harm, abuse, neglect or family violence.

The court considers a long list of other factors when making this decision;

What the children think, taking into account their age, maturity and level of understanding (children do not have to say what they think if they do not want to)

- The relationship the children have with each of their parents and with other important people in their lives, such as grandparents or brothers and sisters .
- Whether each parent has taken the opportunity to participate in making long term decisions about the children, as well as spent time with and communicated with the children.
- Whether each parent has assisted in maintaining the children
- What the effect might be on the children if there was a change to their living arrangements, including being separated from siblings in their lives
- The practical issues for the children in spending time with and communicating with each parent, including, how much it is likely to cost.
- Whether the children's parents or other people (such as grandparents) can provide for the children's needs, including their emotional needs and intellectual needs (not just financial needs).
- Particular things about the children and the parents, such as their maturity, their lifestyle, background and culture.
- The right of Aboriginal and Torres Strait Islander children to enjoy their culture, including sharing that culture with other people of that culture and the effect of any parenting orders on this right.
- The parents' attitudes toward their children and to their responsibilities as parents.
- Any family violence involving the children or a member of the children's family.
- If a family violence order currently applies or has applied in the past to your family, the court will look at:

- the nature and circumstances of that order
- any evidence that was put forward in the proceedings leading to the order
- any findings that the court made during the proceedings, and
- anything else that the court sees as relevant
- Whether it is better for the court to make an order that means that the parents are less likely to come back to court about the children again, and
- Anything else that the court thinks is important.

Each family is different. It is important to remember that what is in one child's best interests might not be the same for another child – even from the same family. It is not just up to the court to make decisions based on the best interests of your children. You too should think about your children's circumstances and try to make decisions based on their best interests when working out arrangements for them.

I need more help

If you would like some legal advice specific to your circumstances, please make an appointment at the Fremantle Community Legal Centre on 08 9432 9790.

We are located at:

Shop 11, Queensgate Building, 10 William Street, Fremantle
08 9432 9790 (9.00 am-4.00 pm weekdays)

You might also find the following services useful:

Legal Aid WA

Telephone infoline: 1300 650 579

(General enquiries) InfoLine open Monday to Friday 8.30 am to 4.30 pm (Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450

National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Family Court of WA

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Alternative formats available on request