

HOW TO GET CUSTODY OF A CHILD

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Just separated? Experiencing difficulties with parenting arrangements? It is important you get advice about what will happen with custody of your children.

There are a lot of myths regarding people wanting full custody of their children. Let's correct some of them.

The legal process

Every family is different and there are no standard or set arrangements for the care of a child following separation.

The *Family Law Act* sets out what matters should be considered, and these will help you to make arrangements for your child. The Act makes it clear that parents have responsibilities not rights and the Act focuses on each parent's responsibility to their child and to prioritise the child's best interests over the interests of parents.

Two key issues relating to care arrangements for a child following separation include parental responsibility and the allocation of time the child will spend with each parent. The terms 'custody' and 'access' are no longer used in the Act having been replaced with 'live with' arrangements and 'spend time' with arrangements.

Full Custody

Usually at the time of separation one of the biggest concerns is that the child will be used as a pawn and not returned. This often leads to a desire for "full custody". Separation is an emotional time and this concern can often be overstated.

The idea of full custody is referred to in law as 'parental responsibility'.

The law presumes that both parents share decision making, and have 'equal shared parental responsibility'. This means the long-term issues in a child's life such as education, religious upbringing, medical treatment, a change to where a child lives and changes to the child's name.

The presumption of equal parents' responsibility will not apply where there is a risk to the child of family violence.

Importantly, the concept of equal shared parental responsibility does not constitute any right to spend 'equal time' with the child. The idea of a parent's automatic right to equal time with a child is a myth.

How much 'access'?

If you are seeking 'full custody' the arrangement will essentially be that your child 'live with' you and except in limited circumstances (including risk of violence or parenting incapacity) 'spend time with' the other parent. It is not generally considered in the child's best interests to spend time only with one parent.

The amount of access time (or what is now a 'spend time' arrangement) between a parent and a child can be determined by agreement between the parents (possibly through mediation) and recorded as a parenting plan or a consent order. If an agreement cannot be reached an application to the court is required. The court will consider the time arrangement that suits the best interests of the child. The court will look at a range of factors, such as:



- the child's wishes
- relationship of child with each parent
- each parent's involvement with the child
- practical difficulties of spending time
- the maturity of the child
- cultural issues
- family violence issues etc...

What not to do

Some people are concerned they might lose custody. Unless there are extraordinarily unusual circumstances, this is usually a misunderstanding of how parenting arrangements work.

Usually, concerns about bad parent behaviour will result in restrictions on the amount of contact (or access) time they will have with the child.

Bear in mind that if you have your parenting matter decided by the Court, the Court takes into account the behaviour of parents towards each other and towards the child when determining what is in the best interests of the child in deciding parenting orders. The behaviour of parents is relevant and can be important to the outcome of parenting orders.

How we can help

At Michael Lynch Family Lawyers we can guide you through the parenting arrangements process whether you are seeking custody or time with your child. This includes from the important first step of getting advice, through the negotiation stage to the finalisation of the arrangement with timely, specific and expert family law advice.

FAQ:

Q. How can I get sole custody of my child?

A. See a family lawyer now. Everyone is different, so don't assume what arrangement should happen and don't immediately fear the worst for your situation. Your behaviour from day one is important.

Q. Does each parent get equal time?

A. Equal time is not an automatic right of the parent. It is a consideration that the law requires.

Q. We already have an arrangement in place for our children. Why do we need it in writing?

A. Everyone's situation is different. Don't assume the worst – get family law advice first. If there are real risks and uncertainties with arrangements for your child you may need to look at trying to document it.

Q. The current arrangements for the care of my child aren't working. What can I do?

A. If you don't have a court order, you should consider negotiations or mediation. If you have a court order, you may want to vary it but to do so you need to satisfy the court there has been a significant change in circumstances. Either way, you need expert family law advice.

Q. The other parent isn't adhering to the arrangement. What can I do?

A. If you have no court order you may need to look at getting one. If you have one you should get family law advice about whether you should take enforcement action or look at varying the order.