



YOUR CHILDREN - HOW DOES THE COURT DECIDE?

The Family Court does not usually need to decide

Community expectations, as reflected by the Family Law Act, the Family Court of Australia and good family law solicitors is that in general terms, if parents are able to decide arrangements between themselves as to the children's needs, that is the best option. Having a judge decide those arrangements is usually the option of last resort.

Why is the Family Court needed to make parent's decisions?

In a democracy like Australia, when two people cannot reach agreement and their disagreement is capable of being heard in a Court, the Court makes that decision.

The Family Law Act gives that role on behalf of children to the Family Court and Magistrates Courts. Sometimes parents cannot agree on the arrangements for their children.

Sometimes there is an extra factor such as another party like a grandparent, allegations of child abuse or neglect, or allegations of domestic violence.

Sometimes the Family Court is required by law to make the decision e.g. for leave to adopt a child in certain circumstances or the question of whether or not a child be sterilised.

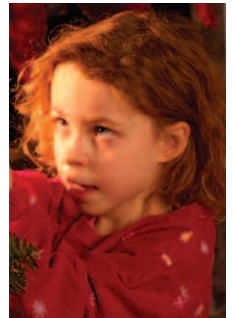
Who makes the decision?

Either a Magistrate in the Magistrates Court or a Judge, Judicial Registrar or Registrar, in the Family Court or Magistrate in the Federal Magistrates Court.

What can the Court order?

The Court can make orders as to:

- Residence - where the child lives;
- Contact - with whom the child has contact and under what conditions;
- Specific issues - some special requirement needed for that child or family;
- Injunction - a restraining order to protect the child;
- Other related orders, such as an order for a lawyer to represent the child in those proceedings (called Child Representative).



What factors does the Family Court take into account?

At all times the Court must regard the best interests of the child as the paramount consideration. The Family Law Act tries to ensure that children receive adequate and proper parenting to help them achieve their full potential and to ensure that parents fulfil their duties, and meet the responsibilities, concerning the care, welfare and development of the children.

The Family Law Act states that the principles underlying those objects are that, except when it is or would be contrary to a child's best interests:

- children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together;
- Children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development;
- Parents share duties and responsibilities concerning the care, welfare and development of their children;
- Parents should agree about the future parenting of their children.



The Family Law Act says the Court must take into consideration:

- Any wishes of the child and the weight the Court should give to the child's wishes;
- The relationship of the child with each of the child's parents and with other people;
- The likely effect of any change in the child's circumstances including the effect on the child or separation from either parent or any other child or other person with whom the child has been living;
- the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relationships and direct contact with both parents on a regular basis;
- The capacity of each parent or any other person to provide for the needs of the child including emotional and intellectual needs;
- The child's maturity, sex and background;
- The need to protect the child from physical or psychological harm;
- The attitude to the child and to the responsibilities of parenthood demonstrated by each of the parents;
- Any domestic violence (or protection order) involving the child or a member of the child's family;
- Whether it will be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- Any other fact or circumstance that the Court thinks is relevant.

What is the Court procedure?

This is best described in our leaflet "Steps to Resolving Most Family Law Disputes". We strongly suggest that you read the Family Court brochures titled:

"Children and Separation: A Guide for Parents" and

"Questions and Answers about Separation for Children".



BENNETT CARROLL

Established in April, 1974, Bennett Carroll is well known as one of the largest law firms outside of the Brisbane CBD. Our well-balanced practice has over 30 years' experience in many areas of specialty including Commercial Law, Conveyancing, Family Law, Estates, Planning and Environment Law, Litigation and Personal Injury. We dedicate ourselves to quality work in these diverse areas and make a point of being accessible to our clients.

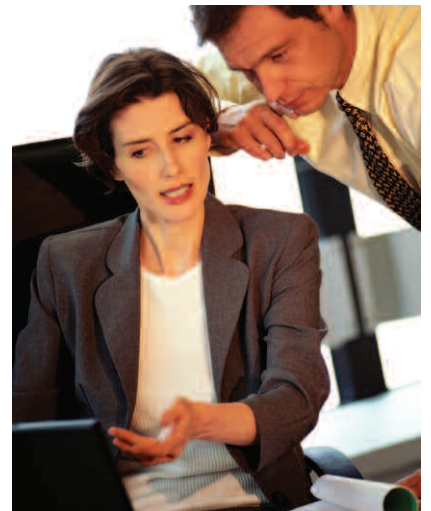
As the preferred solicitors for several National and International companies, we represent well known financiers and developers and hold a reputation for reliability that we intend to keep. Bennett Carroll prides itself on being prompt, accessible, and dealing with you in a language that you can understand; demystifying the law.

Bennett Carroll is in the process of expansion with continued focus on hands-on, up-front problem-solving.

We have offices at Upper Mt Gravatt, Stafford and Kawana.

We pride ourselves in being the market leaders in state-of-the-art technology combined with old-fashioned client service.

The solicitors in our family law section are Warren Tegg, Kate Murphy and Joanne Bennett



Warren Tegg

Warren was admitted to practice as a Solicitor of the Supreme Court of Queensland and the High Court of Australia in 1979. He ran his own legal practice specialising in Family Law and Business Advice from 1980 until 2001 before merging with Bennett Carroll. Warren has been helping people with their Family Law problems since the inception of the Family Law Act in 1976.

Warren is Department Head with the Family Law division of Bennett Carroll. He brings to the department a wealth of experience that includes some five years running his own call centre for people with Family Law problems, as well as acting as a sessional mediator with Relationships Australia Queensland from 1989 to 1994. He is also the General Manager of the Master Guidance Company, which is a counselling service owned by Bennett Carroll.

Warren has served on a number of Queensland Law Society committees during his career and is currently a member the Small Practice Management division where he has been called upon to speak at State conferences on legal practice.



Kate Murphy

Originally from Northern NSW, Kate studied at Queensland University of Technology graduating in 2005 with a Bachelor of Laws and a Bachelor of Business. She has a strong interest in Family Law, which extends to international law relating to marriage and children.

Kate was admitted to the Supreme Court of Queensland in 2006 and the High Court of Australia in 2007. Kate has over 4 years extensive experience in Family Law, as well as engaging in Criminal and Commercial Law. Kate has also had the benefit of being trained with Pauline Tesler, with a strong focus on negotiation.

Kate is a member of the Queensland young lawyers association.

Joanne Bennett

Joanne graduated from Deakin University before completing her Professional Legal Training at Bond University in 2003 and was admitted in December that year.

Joanne is an experienced family lawyer and can offer professional assistance and guidance in all types of family law matters including those involving children and financial issues, de facto relationships, pre-nuptials and parental orders.

Joanne also has extensive Commercial Law experience in vital areas such as property, company structures, franchise agreements, joint venture agreements and leases.

Family law is a very complex and emotional area of law; it will involve your whole family. This is why when things go wrong, you need an experienced team of friendly lawyers who are compassionate professionals with real life experience who understand your problems.



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- Conveyancing
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