



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

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A common question in family law parenting disputes is: "Will my child's wishes be considered?" Unfortunately, there is no clear-cut answer to this question. However, what can be said is that a child's wishes alone will **not** determine a parenting dispute.

In some circumstances, a child's wishes will be taken into consideration and afforded weight by a judicial officer, but ultimately parenting orders will always be made in accordance with what is in the best interests of a child. [Read more about what is considered when making parenting orders, in our article "Parenting orders for spending time with children"](#).

When considering what is in the best interest of a child, the child's 'views' or 'wishes' may be considered as an additional consideration under the *Family Law Act 1975* (Cth) ("**the Act**").

## How does the court 'hear' the views of a child?

The Act outlines how the court may inform itself of views expressed by a child.

The court may inform itself of views expressed by a child:

by having regard to anything contained in a report given to the court under Section 62G (2). This generally requires the person giving the report to ascertain the child's views and include those views in a report; or

by making an order for the child's interests in the proceedings to be independently represented by a lawyer. The Act requires an Independent Children's Lawyer for the child to ensure the child's views are fully put before the court; or

subject to the rules of the court, by such other means as the court thinks appropriate.

In Australia, it is not commonplace for a judicial officer to speak directly with a child in respect of their views or wishes. Such information is reported to the court either through a report; a Child's Wishes/Family Report or a Single Expert Witness Report, generally written by a child psychologist or social worker, or an independent party (an Independent Children's Lawyer or family consultant).

In accordance with the Act, a child is **not** required to express their views in relation to a matter.

## What weight is attributed to a child's view or wish?

Again, there is no simple answer to this question. It is largely dependent on the unique circumstances of each matter.

The weight afforded to a child's view or wish can be dependent on the following factors:

The child's age, maturity and understanding. Generally speaking, an older child's wish will be given more weight than a younger child, as they will generally be considered more mature and have a greater capacity to have input into decisions that affect them;

Whether the child has been influenced by a parent or third party;

The strength and duration of the child's wishes; and

The degree of the child's appreciation of the long-term implications of their wishes.

It is also important to note that a child's view is only one of the additional considerations found in the Act, amongst a raft of additional considerations that must be considered together with the primary considerations.

There is often caution surrounding a child expressing a view or wish because:

children are often 'people pleasers' – especially in a separated family dynamic. Children will tell parents "what they want to hear" and not necessarily express the same wish to both parents;

children can be influenced by the views of a parent, and therefore the view they express may not necessarily be of their own construction; and

children are often not mature enough to be able to form and articulate a well-reasoned view with regard to their future circumstances.

Whilst a child's view or wishes is a relevant consideration in the making of parenting orders, it will generally not be the only determining factor. It is important to appreciate that what is in a child's best interest is not necessarily aligned with what a child's view or wish may be.

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