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## CHILDREN'S ISSUES - IT'S ALL ABOUT THE KIDS

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### ***SUMMARY***

- The basic principles set out for children in the *Family Law Act* are:
    - kids have the right to be properly cared for and protected from harm; and
    - parents have the responsibility to care for them.
  - You will probably have to compromise around arrangements for your children. Try to be flexible about the arrangements - it will be better for you and, more importantly, much better for your children. Compromise involves not fighting over every single issue. Not presenting a target often assists in reducing the stress and tension.
  - Try to keep lines of communication open in the negotiation phase and after you have resolved children's issues. There are many decisions to be made about your children's future and, in almost all circumstances, you will have to consult each other about them.
  - If issues relation to arrangements for your children end up with lawyers or in the Family Courts try to keep a sense of proportionality about what is happening – it's pointless spending \$5,000 each on legal bills for an argument over who should be washing and returning the children's school clothes when you could buy a second set for a fraction of the legal expense. A 'win' is not a 'win'; it's a lose-lose in some circumstances.
  - The way a Court will see the children's situation may be quite different to the way you see it, or the way you would expect the Court to see it.
  - Each child is an individual and, as they grow older, a Court will pay more attention to their personalities and opinions. When deciding where the children should live, a Court is much more likely to consider their opinion in their mid to late teens than when they are younger. Until kids are old enough
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to decide where they want to be and other arrangements that impact on them, the parents must decide – and should try to coparent cooperatively and in the children’s best interests.

- If you want to move a long distance away from your partner, sharing time with your children will be difficult. These cases often end up in Court because it is difficult to figure out who the children should live with when the direct consequence is contact with the other parent will be severely restricted.

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This Chapter is about issues that are relevant in family law regarding children.

A child is a person who is under 18 years of age. The basic principle of *Family Law Act* in relation to children – that the best interests and welfare of the child are paramount - has not changed since the Act was introduced in 1975:.

An important part of family law is to provide a framework in which to make proper arrangements for children after their parents separate. One way of doing this – in a legally binding and enforceable way – is through Parenting Orders. This term describes all Court Orders that deal with children’s issues, whether made by consent (agreement) or by the Court.

They can be simple:

*“Lizzie and Michael shall spend equal time with their parents on alternate weeks commencing at 5:00 p.m. each Sunday.”*

They may also be very complex and cover specific issues such as where the children are to live and spend each minute of their lives, who will be responsible for any and every aspect of their care and control (and who won’t) and prescribing which schools, religious institutions and relatives they will be involved with (or not), where they are to be delivered and collected when moving from one household to another, in what conveyance they are to travel and who is to supervise and/or be present at the handovers. The Orders might even specify what the children are to be fed, what medication is to be administered, which clothes will travel with them (and in what condition), who they may telephone, when and at whose expense.

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These are all 'Parenting Orders'.

The boring bit:

The laws in relation to children's matters are set out in Part VII of the *Family Law Act*.

The difficult bit:

How do parents – who previously were living together and (more or less) making joint decisions about their kids – come to an agreement and continue to make decisions about these matters after they have separated and when they are living apart?

The practical bit:

Parents need to reach an agreement which resolves arrangements for the kids in a way that respects the children's interests and promotes their welfare. If they don't or can't, the Courts can do it for them.

Two fundamental themes underlie family law as it relates to children:

- Kids have the right to be properly cared for and protected from harm; and
- Parents have the responsibility to care properly for their children.

This is what the *Family Law Act* provides and it is what the Courts consistently order.

So, the simply question to ask is:

*“Do the proposed arrangements advance the best interests of our children – or not?”*

All separated parents must, or should, deal with and resolve this fundamental question.

While it is not always possible for parents to agree fully on what arrangements are best for their kids, most manage to reach an agreement they can live with – even though it might not be their number one preference. Compromise will generally be an essential ingredient in making arrangements for your children and co-operation and co-parenting are essential in order to make those arrangements work.

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Compromise will reduce the levels of conflict and tension around children's issues. In turn, this should make life very much easier for all, especially the children. If you fight for every possible advantage and concede nothing, the conflict will go on and the stress levels will continue to rise. That cannot be good for the children.

Some issues can never be compromised, like the physical and emotional safety of your children. However, try to be as objective as possible and keep in mind that the best interests of the children are what this is all about. Pick your fights wisely and dig your heels in only on really important issues.

The advantages of settling disputes apply to children's issues as they do to any other matters. Consider the cost, the time and the likely outcome and ask whether it's really worth going to Court.

Exhaust your avenues for negotiation and dispute resolution before you do commence proceedings. Give mediation a try– with a qualified and experienced mediator who knows what the family law is all about and how to structure agreements around children's arrangements that will work.

### ***Arrangements for the kids***

As a parent you have obligations towards your children – parents do not have rights.

The *Family Law Act* states that:

*“the best interests of the child is the paramount consideration.”*

The key issue is to work out what is in the best interests of your children, not the wishes of one or other parent, grandparents, new partners or anyone else.

Until quite recently 'custody' of children was awarded to one parent, with the other having 'access' and specified rights to see them. Under such arrangements, children were often fought over by the parents, with each side claiming that they were the one better equipped to have custody. Children were treated like pieces of property with the result that custody was seen as the 'prize' for being the better parent. Sadly, some parents then showed little interest in having regular access if they did not 'win' custody.

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Over the years, other concepts and terminology have replaced 'custody' and 'access', including

- 'residence' and 'contact';
- 'living with' and 'spending time with'.

Despite the changes in language, the core principle has remained exactly the same: 'the best interests of the child' should be the determining factor in deciding when and with whom children should live.

### ***Deciding the arrangements for children***

#### **Getting it resolved by agreement**

Today, couples who have separated are very much encouraged to talk rationally about the impact their situation will have and has had, on the children. Minimising the negative impact of living with two parents in different homes and at different times is extremely important. Therefore, if parents can decide on a mutual approach to bringing up the children, everyone will benefit. Decisions that parents will have to make include:

- what form of communication will the parties use when discussing, making and changing arrangements for the children;
  - where the children will live (one place or two?);
  - how to fit in with the parents' work arrangements;
  - how to make arrangements for the children during holidays (school holidays and long weekends);
  - what arrangement should be in place for birthdays, special and family celebrations;
  - when and where should the children spend time with others (grandparents and other relatives);
  - what education and schools should the children attend;
  - what attendance at sporting and extra-curricular activities is appropriate;
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- what will the handover arrangements be;
- what special needs, including medical requirements, need to be agreed;
- what arrangements are reasonable for spending time with siblings and step-siblings; and
- what religious celebrations and worship should the children participate in;
- how to bring flexibility into the terms of the agreement and providing for future events.

When discussing the arrangements for their children parents should place a large notice in front of them that reads:

**THE DECISIONS WE MAKE  
ARE IN THE BEST INTERESTS OF OUR  
CHILDREN**

Do not allow the children to become ‘collateral damage’ to the emotional fallout of your separation. They are not responsible for the split and parents have a responsibility to minimise any suffering they experience as a result of it. Your views as to the children’s best interests are very important, but they are only one person’s views. Remember:

*“What you see and hear depends a good deal on where you are standing.”*

Each parent probably has a different view of what is in the children’s best interests. But it is not a matter of getting the other person to agree with those views. It is a matter of finding a path which will best serve the children’s welfare.

Children’s issues are not like engaging in wage and salary negotiations. Don’t start with an ambit claim (an extreme position which is not sustainable), or pretend to seek conditions that you are really willing to sacrifice in exchange for others. To do so is only playing with your children’s welfare. That kind of approach just puts your

interests before those of your children and the 'game' is not likely to be successful. The other parent will likely respond to the tactic by taking a totally opposite position and you will end up too far apart for meaningful negotiations.

It is worthwhile thinking about what your worst case scenario might be. For example, consider how little time the kids might end up spending with you if the matter goes to Court and it all goes wrong?

If you think that is pretty bleak, the scenario could become even bleaker if you engage in an all-in Court battle over children's issues. The more you fight, the less chance you will have of getting the matter resolved as you might wish – and the longer it will take and the more expense you will incur. The final decisions will be made by a judge who (correctly) will take only the needs of the children into consideration, not yours.

***Equal time and equal responsibility– does it really mean 'equal?'***

*Before the Court makes a Parenting Order, it must consider whether equal time with each parent is practical and would be in the child's best interests.*

*It is presumed that 'equal shared care' is in a child's best interests unless it can be demonstrated otherwise. While this has not led to a situation where each parent will have the children living with them for exactly the same lengths of time, it has compelled the Courts to consider the appropriateness of kids spending pretty much equal time with each parent – quite a change from the previous laws which had no such requirement.*

*'Equal shared parental responsibility' – the parents' decision-making about their child or children – applies in all children's matters.*

*Today, both parents have an equal say in parenting decisions, such as where the children will go to school, their eating and sleeping habits, their health, their religious observances etc. This is the case even if nobody seeks an order for equal shared parental responsibility.*

*Equal shared parental responsibility can be reversed where there are reasonable grounds to believe that a parent has abused the child or there has been family violence. It can also be overturned where the Court is satisfied that this would be in the child's best interest.*

**Communications & co-parenting**

Effective communications are essential for parties to co-parent successfully after separation. For some parties, this comes easily and they are able to discuss



issues as they arise in a sensible and cooperative way at any time and by whatever medium – hence, they co-parent successfully even living apart.

However, for others, communication can be difficult, especially after an acrimonious or bitter separation. Or, simply, the sadness of a failed relationship makes communication with a former loved one very problematic.

But it has to be done and there are various ways of overcoming the difficulties in communication that are often encountered.

A golden rule in this area is consistency – where there are difficulties, have some agreed rules around communications and stick to them. For instance, if it is agreed that all communications regarding children’s arrangements (except in emergencies) should be by email, don’t start sending texts and leaving telephone messages about how Johnny has been unwell or Jennie has to have dental treatment. This will often start parents down the path of confusion as to what the messages are and how to deal with them. Parents who are amicable can deal with these situations but they are a recipe for disaster where there is any level of conflict and/or disagreement.

It’s all about the kids -If you are seeking Parenting Orders (by consent hopefully), make sure you have a provision about modes of contact and, where necessary, the timing of contact.

An alternative – that is gaining more and more adherents – is to communicate through a purpose-built App like “Divvito”, which enables you to structure your communications and keeps a permanent record of what has been said, proposed, objected to or advised and what the responses are.

Divvito is not the only App but it has the added advantage of “sanitising” messages for a limited period of time by putting them on hold where the message is deemed to be inappropriate, abusive or threatening. A parent can still send whatever they want to send, but there is a cooling off period to enable them to re-think messages that might do more harm than good.

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### *Criticising the other parent (or their family)*

It should be obvious that parents should never try to influence the children against the other parent or the other parent's family.

Parents should not use their children as pawns in battles over the a relationship that has ended or to inflict damage on the other. It is worth repeating: a parent does not stop being a parent simply because of separation.

### *Attitude towards responsibilities as a parent and towards the other*

The attitude each parent shows (and has shown in the past) towards their responsibilities as an important factor in deciding what arrangements should be put in place for children.

While this is pretty obvious, when decisions are made about where the children will live, a parent who has demonstrated and continues to show a positive interest in the welfare of the children will be better placed than a parent who has not.

That is not to suggest this is a competition to decide which parent has the 'best attitude'. Both parents can be positive and properly concerned about the children's welfare and demonstrate this through their actions. Equally, a parent who simply talks about how interested they are in their children's welfare but does little by way of practical activity will find it hard to convince a Court that their proposals for the children are the best.

Another consideration is how each parent has promoted the relationship of the children with the other parent. So, if you prevent the children from having much to do with the other parent purely because of dislike or blame for the breakdown of the relationship, this is unlikely to advance your cause.

### *The age and stage of the kids*

Arrangements for the children will often depend on their ages and their relationships with each other and usually have to be reconsidered as time moves on. For example, the day-to-day needs of a baby are very much tied to its mother and the Family Court is unlikely to remove a baby or toddler from the care of the mother on a long-term basis.

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Social research has shown that, as a general rule, a younger child needs shorter but more frequent periods with the 'non-primary' parent (in traditional relationships usually the male). As a child gets older, the periods can be longer and less frequent.

The wishes of a child are relevant in looking at what is in a child's best interests, especially as they get older. The Courts are less likely to intervene and make any Orders as a child advanced into the teens. So, if a 16-year-old boy has expressed a clear view that he wants to spend more time going fishing or to the footy with his father, the Courts are unlikely to entertain an application that says he is not allowed to go because he should be spending time with his mother instead.

### *Education, religion and cultural issues*

Schooling, religion and social and cultural background may be important considerations when negotiating arrangements for children. The issues will be different in every case but should be thought through carefully before Orders are sought (whether by consent or in contested proceedings in Court).

Concerns about a child's religious upbringing may be more important to one parent than the other. Observance of religious traditions or having the children with you on special religious occasions are often of great significance to one or both parents. Sometimes one parent will want the children educated in a certain way while the other is not even slightly concerned (unless it involves expensive school fees).

Holiday arrangements – especially when there are work commitments – are also a matter of concern when considering potential arrangements. So too with the children's and parent's birthdays and special family occasions. These issues need to be carefully thought through and negotiated.

### *Step children*

With people changing partners more readily than they did in the 1970s, there are many more step children these days.

A step parent does not, in the absence of a Court Order saying otherwise, have a legal responsibility for a step child.

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Step parents have no legal responsibility to pay Child Support.

The relationship between step parents and a step child may be very relevant in considering what arrangements are in a child's best interests.

*Parents pursue their own lives*

What is in the best interests of any particular child may be very much open to personal interpretation.

For example, having the kids sitting in a car outside the pub while a parent is inside drinking with mates may not be considered to be in their best interests. However, taking the children to visit friends who your ex does not think are desirable may well be another matter. One person's opinion of the other's friends and associates does not mean that the visit is not in the best interests of the children – unless there is a likelihood of inappropriate behaviour in front of the children, such as drug use, excessive drinking or violence.

You may not like your former partner taking the children to, say, a Pentecostal Church or an ashram. However, that is only your view. If this has been your ex-partner's faith before the separation, could you demonstrate to a Court that this is now inappropriate or damaging to the children?

Usually, the Court is not particularly concerned about the company you keep, the religious views you follow or what sports and entertainment excite you – unless it is illegal or has an adverse impact on the children and is considered not to promote their welfare or be in their best interests.

***Does a person's behaviour impact  
on their ability to be a good parent?***

*The father, a respected member of the medical community, enjoyed attending gay bars dressed as a female. In negotiations over the future of their two small children, the mother stated that - unless all of her demands for the children were met (as well as her demands over a property distribution) - she would disclose his behaviour to family and friends. She threatened that this would destroy his professional career.*

*The children knew nothing about their father's behaviour, which only took place after they went to bed. The likely impact of this behaviour on his children was, therefore, negligible.*

*In these circumstances and provided the husband undertook not to engage in these practices while the children were with him or were appropriately supervised:*

*a) the Family Court would show little interest in her revelation*

*b) his reputation would remain intact because Family Court proceedings were entirely confidential*

*The days of salacious stories about 'abnormal' behaviour being splashed across the front page of the papers have long since ended – killed 'stone dead' by the Family Law Act*

*The Family Court has allowed children to spend time with parents who are in prison, convicted of serious crimes, drug or alcohol affected or mentally ill patients - as long as it is in safe surroundings and in the children's best interests.*

*It's not all that long ago that some parents tried to prevent contact with another parent simply because they were gay or lesbian. How our society's values have changed!*

### ***What happens when children's matters go to Court***

It is very clear that children have rights under Family Law.

Parents do not have similar rights but they have plenty of responsibilities.

When you take a case involving children to the Family Court your primary aim must be to ensure that your children's rights are protected.

If you are planning to fight over your children in the Family Courts stop and think:

- "Why am I doing this?"
- What do I stand to achieve?"

Perhaps you will decide that it is time to discuss it with your ex and negotiate a solution.

You should be aware of what might happen if children's matters end up in Court.

### **Pre action processes**

Before you can start proceedings, you must get a certificate indicating that you have undertaken 'appropriate mediation' or 'primary dispute resolution'. This is

compulsory in children's matters. It involves going to a Family Relationships Centre or an Accredited Family Dispute Resolution Practitioner and attempting to resolve the issues or, at least, you inviting the other parent to do so and they refusing.

Usually, mediation will bring about at least some agreement and you can then take a shortcut in the Court process by having the agreement made legally binding through Consent Orders.

However, you can get the certificate even if you have not resolved anything at all at the session. Also, if one party fails to attend the session, the certificate can still be issued stating this fact.

### Commencing proceedings

The issues relating to children that you can take to the Court include:

- where and with whom the children are to live;
- what time the children will spend with each parent;
- what arrangements should be made for their education and religious upbringing, medical issues, what to do with passports, etc.

All of these issues will be decided according to the basic principles of what is in the child's best interests and what will promote the child's welfare.

### What is relevant in determining the best interests

According to the *Family Law Act* the best interests of children are met by:

- ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives to the maximum extent consistent with the best interest of the child;
  - protecting children from physical and psychological harm and being subjected to abuse;
  - ensuring that children receive full parenting to help them achieve their full potential; and
  - ensuring that parents fulfill their duty to meet their responsibilities concerning the care, welfare and development of their children.
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These are all are great concepts and few people would argue against them. Unfortunately, each is open to interpretation, which is why many disputes over children end up in Court.

Under the *Family Law Act* the Court must take into consideration a wide range of factors in determining what is in a child's best interests, including:

- the views expressed by the child;
- the child's maturity and level of understanding;
- the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent;
- the practical difficulty and expense of the child spending time with and communicating with each parent;
- the maturity, sex, lifestyle and background – including cultural traditions of the child and of the child's parents; and
- any other factors or circumstances that the Court thinks are relevant.

In other words, the Court may take virtually anything into consideration in determining what is in the best interests of each child.

Although the Court may "take into consideration the views of the child", children are not allowed to give evidence in Court (nor, indeed, to watch events unfolding in the Court). A Judge has the power to interview a child but this is a very rare occurrence. Children's wishes are usually determined by experts appointed by the Court.

#### *Attempting to influence the children*

The Courts take a very dim view of a parent who tries to influence the children against the other parent. Sometimes, a Judge will order that parents do not discuss any issues or belittle each other in the presence of the children.

You may hold genuine views about the behaviour of the other parent of your children, but trying to influence the kids to your cause is unlikely to help and will

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possibly have the opposite effect. So, focus on what is relevant – the children’s interests. Getting this resolved will help everyone to move on.

### Child experts

In many cases, child experts are appointed by the Court to prepare a report on proposed arrangements for the children. Their report is provided to the Court to assist in its consideration of the Orders it will make.

The Court will provide the expert with ‘terms of reference’ for the report, which might require:

- interviewing the child in the presence of the parents (first with one, then the other);
- interviewing the parents separately; and
- interviewing the child without either parent being present (dependant on the age of the child).

The experts will usually assess each of the relevant factors set out in the *Family Law Act* (particularly in relation to the child’s wishes and the likely impact of each of the parents’ proposals on the welfare of the child) and report what they consider to be in the best interests of the child or children.

If a case proceeds to trial, the expert’s report will form part of the evidence to be considered by the Judge and the expert can be cross-examined on the contents of the report. An expert’s opinions carry considerable weight and it is often difficult to persuade a Court that the expert’s recommendations should not be followed.

### Independent Children’s Lawyer (ICL)

At times, particularly in cases with high levels of conflict, an independent lawyer will be appointed to represent the child’s best interests (but not necessarily the child’s wishes). The ICL will ensure that the child’s interests are presented properly to the Court and will sometimes commission independent reports. This lawyer is a full participant in all of the proceedings, sitting between the lawyers for the sparring parents and/or others who are involved in the proceedings.

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### *Judge management of children's cases*

Judge management is a process in place in many of the Family Courts, designed specifically for dealing with children's issues. A Judge is involved from the very early stages and everything that is said at all hearings in Court is considered to be evidence in the case. The same Judge will stay involved in a case from beginning to end, giving him or her the opportunity to assess the parties throughout and to be aware of everything that happens while the case is before the Court.

### ***When it's resolved – complying with Court Orders***

Whether you and your ex agree on the arrangements for the kids or whether the Court Orders have come about through the Court process, once Orders have been made you must comply with them – unless there are exceptional circumstances.

Exceptional circumstances might exist where you have a genuine fear that complying with Orders would be placing the children in danger (for instance, by delivering the children to the other parent). If the particular danger had not been contemplated in previous Court proceedings, you might be justified in withholding the children and disobeying an Order. However, if your concern is that the other parent is simply an unsuitable person or you simply don't like the terms of Orders that have been made, you are not justified in deciding that the children should not go.

### ***Relocation***

Today in Australia, there is far greater social mobility than at any time in the past. Thousands are on the move between cities and even across State borders. Some move overseas. When couples with children split up, difficulties in making decisions or arrangements for their children can be compounded by the fact that the parents may also end up separated by significant distances – limiting opportunities for regular contact with their children.

Sometimes when a relationship breaks down one of the parents may want to move to more familiar home territory, or move interstate for work or a better lifestyle.

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In family law terms, if you want to move away from where you live and you want to take the children with you this is called 'relocation'. Relocation issues may arise whether or not Orders are already in place.

When people want to relocate with children, the dispute often ends up in the Family Courts. Judges are then faced with the most difficult of alternatives – to allow or to prohibit relocation. In these situations, there is usually no middle ground or compromise. It is a decision to allow relocation (and the relocating parent takes the children away with them) or to refuse permission (and the 'relocating' parent goes without the children or does not go at all).

#### ***RELOCATION - AN IMPOSSIBLE CHOICE***

##### ***To Israel – without dad***

*A separated couple had very few assets and the mother wanted to relocate to Israel, from where the couple had migrated 10 years earlier. She had little support and few friends in Australia and her parents and social support system were in Israel. By contrast, the father had a stable and well-paid job in Australia and had many friends and family support.*

*The Family Court considered that both were excellent parents to their three children aged 4, 6 and 9 and were well loved by each of them. Despite their separation both parents participated actively in the children's lives and were flexible in arrangements around where the children spent time.*

*The mother brought an application in the Family Court seeking to relocate to Israel with the three children. Unsurprisingly, the father objected to the application, especially as the family's finances would prevent him from travelling to Israel or bringing the children to Australia for holidays.*

*In what must have been an impossibly difficult decision, the Court allowed the mother to return to Israel, concluding that it was in the children's best interests that they return with her. The decision was a disaster for the father but, with the parties unable to agree, the Court had to make a decision on the basis of considerations of the children's welfare – despite the distressing consequences.*

*Sadly, many relocation cases are often like this.*

##### ***In Mount Isa – without mum***

*A couple moved to Mt Isa with their young children to enable the father to pursue his career in the mining industry. The marriage broke down and the mother wished to return with the children to Sydney, where the parties had previously lived.*

*The matter went to the High Court of Australia which confirmed the Family Court's decision that it was not in the best interests of the children to be removed from Mt Isa.*

*Ironically, after the case was decided - after years of argument and tens of thousands of dollars in legal expenses - the mother formed a relationship in Mt Isa and decided to stay ... and the father has since moved elsewhere.*

*Life is complex and the decisions the Court is asked to make are often gut wrenching.*

### ***Abduction – taking the law into your own hands***

Sometimes the arrangements specified by the Court for a child to spend time with a parent are strongly opposed by the other parent. But even if you disapprove of the Court's decision and think it's completely wrong, don't try to remove the child from the country unless you have the approval of the Court.

Attempting to flee overseas with the child or children is not recommended because:

- the other parent can arrange to have your name and/or the child's name placed on a Federal Police watch list, maintained at every international port and airport in Australia. Once listed, you will be unable to leave Australia;
- it would be contrary to an Order of the Family Court and the Court does not take kindly breaches of its Orders;
- the child or children may be ordered to be returned to Australia (at your expense) under the international Child Abduction Convention (the Hague Convention), an agreement which applies in over 85 countries including Australia.

### ***Taking children out of Australia***

Taking children out of Australia in contravention of a Court Order is abduction. The consequences of this can be extremely severe and you are likely to be compelled to bring the children back to Australia and face Court action.

If you do nothing else, make sure you get proper legal advice about your responsibilities. The abduction laws are administered by the Federal Attorney

General's Department (although any Court action in Australia will still take place in the Family Courts).

If you discover that your children have been abducted and taken outside Australia, get legal advice and/or advise the Commonwealth Attorney General's Department immediately. If you're lucky, the children will have been taken to a country which is covered by the Hague Convention. Many countries are parties to this Convention (including most of Europe and the United States) and the return of the children from these places is likely to be enforced.

Beware – some of our nearest neighbours (including Malaysia and Indonesia and many Asian countries) are not parties to the Convention and recovery of children from those countries will not be possible through these means.

### Passports

Children's passports are often an issue. Under Australian law both parents must sign an application for a child's passport. A child cannot travel internationally without a passport. Where one has already been issued, the parent holding the passport may travel with the child.

Where a passport is sought, a parent can approach the Court and ask for Orders compelling the other parent to sign the application and, in extreme circumstances, for the Court to sign on behalf of a refusing parent.

Where there are concerns about the possible use of a child's passport, you can request the Court to hold a passport (or have it held elsewhere pending decision of the Court) until further Orders which might permit its use.

If a child has dual nationality, but no passport has yet been issued, it may be helpful to notify the embassy or consular representatives of the other country and request that no new passport be issued. However, this is not a watertight solution and may not be as effective as steps you might take in Australia, such as placing children on the Federal Watch List or obtaining Orders that all passports be held by the Family Court.

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### ***Child abuse and violence***

Our society does not condone the abuse of anyone, let alone children. Abuse has extremely serious effects on a child and significant implications at law.

Abuse takes many forms and should be reported promptly so it can be investigated by the appropriate authorities. There are obligations under Federal and State laws for the compulsory reporting of suspected or actual child abuse.

### **What is abuse?**

Child abuse is harm to, or neglect of, a child by another person, whether adult or child. It can be physical, verbal, sexual or through neglect.

- physical abuse sometimes results in serious injury to the child and is often evident through welts, bruises or burns;
- verbal abuse often results in aggressive or withdrawn behaviour and a child that is afraid to go home;
- sexual abuse can be recognised by a range of physical, emotional and behavioural signs; and
- neglect can be seen in the child being unwashed or uncared for, undernourished or in obvious need of medical or dental treatment.

The type of abuse is essentially irrelevant under the law. If abuse occurs, or if you have reasonable grounds to believe that there is abuse, take any evidence you have to the police or to the child welfare authorities in your State. If you have a lawyer, also advise him or her about your concerns or any action that you may have taken.

However, making false claims may well rebound. Not only is it against the law but such claims throw serious doubt on your credibility.

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### ***Do's & Don'ts***

A prominent child psychologist has provided a list for separated parents of do's and don'ts:

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### **1. Talk to your children about your separation**

Talk to your kids. Tell them, in very simple terms, what it all means to them and their lives. When parents do not explain what's happening to their children, the kids feel anxious, upset and lonely and find it much harder to cope with the separation.

### **2. Be discreet**

Reorganise things in a way that respects your children's relationship with both parents. Don't leave letters or court papers out on your kitchen counter for children to read. Don't talk to your best friend, your mother or your lawyer about legal matters or your ex when the kids can hear you. Kids are ill-equipped to understand these adult matters.

### **3. Act like grown-ups: keep your conflict away from the kids**

No one stands to benefit by involving the children in your disputes – doing so ends up hurting everyone.

### **4. Stay in the picture**

The more involved parents are after separation and divorce, the better for the children. Where a good parent-child relationship exists, kids grow into adolescence and young adulthood as well-adjusted as married-family children. Develop a child-centred parenting plan that allows a continuing and meaningful relationship with both parents. High levels of appropriate parental involvement are linked to better academic functioning in kids as well as better adjustment overall. Help with homework and projects, use appropriate discipline and be emotionally available to talk about problems.

### **5. Deal with anger appropriately**

In their anger and pain, one parent may actively try to keep the other out of the children's lives - even when they are a good parent who the children love. When you're hurting, it's easy to think you never want to see the 'ex' again and to convince yourself that's also best for the kids. But children's needs during separation are very different from their parents.

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## **6. Be a good parent**

Going through a separation is not a holiday from parenting – providing appropriate discipline, monitoring your children, maintaining your expectations about school, being emotionally available. Competent parenting has emerged as one of the most important protective factors in terms of children's positive adjustment to separation.

## **7. Manage your own mental health**

Seek help if feelings of depression, anxiety or anger continue to overwhelm you. Even a few sessions of therapy can be enormously useful. Remember, your own mental health has an impact on your children.

## **8. Keep the people your children care about in their lives**

Encourage your children to stay connected to your ex's family and important friends. If possible, use the same babysitters or child-care. This stable network strengthens a child's feeling that they are not alone in this world, but have a deep and powerful support system - an important factor in becoming a psychologically healthy adult.

## **9. Be thoughtful about your future love life**

Take time, a lot of time, before you remarry or cohabit again. Ask yourself: must your children meet everyone you date? Young children, in particular, form attachments to your potential life partners and, if new relationships break up, loss after loss may lead to depression and lack of trust in children. Don't expect your older kids to instantly love someone you've chosen - this person will have to earn their respect and affection.

## **10. Pay your child support**

Pay child support regularly - even if you're angry or access to your children is withheld. Children whose parents separate or divorce face much more economic instability than their married counterparts, even when support is paid. Don't make the situation worse. Let your message to the kids be that you care so much about them that you will keep them separate and safe, from any conflict. They will appreciate it as they get older.

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**This document has been adapted from a Chapter in the book “Know Where You Stand – A Guide to the Family Law”, written by Ian Shann as Family Law Practice Group Leader at Slater & Gordon in 2011.**

**It is not intended as legal advice and the contents should not be used as a substitute for independent legal advice which all parties involved in family law matters are entitled to seek at any time.**

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