



What is a change of residence application?

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A change of residence occurs when a child's primary residence changes from one parent to another. Unless by consent between parents, this usually involves an application in the Federal Circuit and Family Court of Australia ("the Court") seeking orders for a change in residence.

At Emera Family Law, we regularly help families across Australia understand these applications - while there's no legal presumption that a child must stay with their primary parent, the Court doesn't take a change of residence lightly, and these cases are often complex and highly fact-specific.

What does the Family Court consider in a change of residence application?

Central to every parenting matter is the question: [What is in the best interests of the child?](#) In determining this, the Court is guided by Section 60CC of the Family Law Act (Cth) 1975.

Moreover, in the case of *Dever & Serano*, the Court also provided a set of tailored considerations specific to change of residence applications, including:

- Any harm the child has suffered, or is at risk of suffering, if a change of residence is ordered;
- The capacity of each parent to meet the child's needs;
- The child's wishes and feelings;
- The child's physical, emotional, and educational needs;

- The importance of maintaining a relationship with the non-resident parent and the implications of ceasing contact;
- The desirability of continuity in schooling and educational arrangements, as well as involvement in sport and other extra-curricular activities;
- Practical and logistical arrangements for care during and after any change in residence;
- The likely impact on the child of any change in living circumstances, including loss of contact with significant members of the child's broader family, friends and even beloved family pets;
- The availability and appropriateness of therapeutic support for the child; and
- The need for any transitional arrangements to support the child's new living arrangements.

What types of harm may support a change in residence?

Physical harm by a parent to a child is not the only argument for a change of residence. Emotional or psychological harm may be sufficient to justify a change in primary living arrangements.

For example, where a parent maintains entrenched but unfounded beliefs about the non-resident parent and, as a result, obstructs the relationship or time spent between the child and that parent, the Court may find that such behaviour is tantamount to emotional or psychological harm. It may be argued that the parent's conduct is such that they are unable or unwilling to promote the child's relationship with the other parent, and the only way that the child will benefit from having a relationship with both parents is for a change of residence to occur.

How does the court weigh the impact of a change of residence?

The case of *Arrighetti & Qodirova* acknowledges that a change of residence is significant and often distressing for a child. As such, the Court will not make orders lightly and a change of residence usually only occurs in rare and exceptional circumstances. Each situation is carefully assessed on its own facts, and a change in residence will only be ordered if found to be in the best interests of the child.

Additional considerations may include:

- The strength of the child's relationship with the current primary parent;
- The child's schooling, friendships, and routine;
- The likely emotional impact of the move on the child; and
- Whether the change can be managed with appropriate support.

Ultimately, the Court must balance any immediate disruption caused by the move against the risk of ongoing harm to the child if the current arrangements continue. The Court must also consider that whilst a move may be upsetting for a child in the short term, it might still be in the child's best interests in the long term.

What role does a child's views play in a change of residence?

A child's view is a relevant consideration in determining change of residence applications (and broader parenting applications).

The Court will consider factors such as:

- The child's age and level of maturity and the weight that ought to be given to their wishes as a result; and
- Whether their views have been influenced by either parent.

The child's wishes are not determinative. The Court will still make an independent assessment of what arrangements are in the child's best interests. The Court may also be guided by the views of an [Independent Children's Lawyer](#) (if appointed).

What happens after a change of residence occurs?

If the Court determines that a child should live with the non-resident parent, it may also make additional orders for transitional support into that new household.

This may include:

- A temporary period where the child does not see the other parent, called a 'moratorium period';
- Supervised time between the child and a parent;
- Requirements for counselling or other therapeutic support;
- Restrictions on contact with other individuals who may contribute to harm, such as extended family members.

These measures are designed to stabilise the child's environment and support their adjustment to the new living arrangement.

What should you do if you are concerned about your child?

If you need assistance with parenting arrangements for your child, including a potential change of residence application, we can help you. You may wish to contact us for advice if you:

- Are concerned that your child is at risk of harm;
- Believe it is in your child's best interests to live with you; or
- Need advice generally about your current parenting arrangements.

Every family's situation is different, and getting the right advice early can make all the difference to the outcome. [Contact our experienced team at Emera Family Law](#) today for tailored advice on your parenting matter.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.