

FACT SHEET – BEST INTERESTS OF THE CHILD

The paramount consideration in any matter concerning parenting or children is the best interests of the child/ren. The *Family Law Act* (“the Act”) sets out certain criteria which the Court **must** have regard to when making decisions regarding children. This criterion is set out below. It is important that you understand that each family is different and each child is unique. It is for this reason that the Court has the power to take into account any other fact or circumstance that the court thinks is relevant in each case.

It is very important that discussions and decisions regarding parenting or children are child focused and in the child/ren's best interests. It is also a very good idea to keep in mind that parenting arrangements may need to be flexible and reviewed at different times. This is because children's needs change as they grow.

How do I ensure that the best interest if my children are met?

The Family Law Act sets out the principles underlying the objects of Part VII of the Act which deals with children.

FAMILY LAW ACT 1975 - SECT 60B Objects of Part and principles underlying it

- (1) The objects of this Part are to ensure that the best interests of children are met by:
 - (a) 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 interests of the child; and
 - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
 - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
 - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.



- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):
- (a) 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; and
 - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
 - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
 - (d) parents should agree about the future parenting of their children; and
 - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
- (a) to maintain a connection with that culture; and
 - (b) to have the support, opportunity and encouragement necessary:
 - i. to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - ii. to develop a positive appreciation of that culture.

How do you determine what is in a child's best interests?

There are primary and additional considerations when determining what is in a child's best interests. These considerations are contained in s.60CC of the Family Law Act.

60CC How a court determines what is in a child's best interests

Determining child's best interests

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

Primary considerations

- (2) The primary considerations are:
- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and

- (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

- (2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

Additional considerations

- (3) Additional considerations are:

- (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;

- (b) the nature of the relationship of the child with:

- i. each of the child's parents; and
- ii. other persons (including any grandparent or other relative of the child);

- (c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:

- i. to participate in making decisions about major long-term issues in relation to the child; and
- ii. to spend time with the child; and
- iii. to communicate with the child;

- (ca) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;

- (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

- i. either of his or her parents; or
- ii. any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;

- (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

- (f) the capacity of:

- i. each of the child's parents; and
 - ii. any other person (including any grandparent or other relative of the child); to provide for the needs of the child, including emotional and intellectual needs;
- (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
- (h) if the child is an Aboriginal child or a Torres Strait Islander child:
 - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
 - i. the likely impact any proposed parenting order under this Part will have on that right;
 - ii. the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
 - (j) any family violence involving the child or a member of the child's family;
 - (k) if a family violence order applies, or has applied, to the child or a member of the child's family--any relevant inferences that can be drawn from the order, taking into account the following:
 - i. the nature of the order;
 - ii. the circumstances in which the order was made;
 - iii. any evidence admitted in proceedings for the order;
 - iv. any findings made by the court in, or in proceedings for, the order;
 - v. any other relevant matter;
 - (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- (m) any other fact or circumstance that the court thinks is relevant.

Consent orders

- (4) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

Right to enjoy Aboriginal or Torres Strait Islander culture

(5) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

- i. to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
- ii. to develop a positive appreciation of that culture.

Do I have to go to Family Dispute Resolution (FDR) to work out what is in my children's best interests?

Yes, you do have to go to FDR before you can bring an application to the Court for a Judge to make a decision about matters concerning your children. This is because the Courts want parents to make a genuine attempt to resolve their parenting issues prior to bringing an application to the Court as litigation can be extremely stressful and expensive and should be a last resort. There are certain circumstances where you may be exempt from the requirement to attend FDR. You should speak with your Lawyer about these exemptions.

Where do I go to find out more information?

If you are familiar with using the internet, go to the Family Court (www.familycourt.gov.au) or Legal Aid Queensland (www.legalaid.qld.gov.au) website. You can also call us between 9am and 1pm on Tuesday, Wednesday and Thursday each week on 1800 244 504. Calls from landlines are free to this number however you may incur charges if you call from a mobile phone.

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