



Determining best interests of the child in family law parenting matters

Date: Saturday November 23, 2024

E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

When parents separate, they will have to make arrangements regarding the care and welfare of any children of the relationship. When they are in dispute about these arrangements, they may have to make an application to the Court to make a decision for them.

When making its decision, the Court must only make orders that are in "the best interests of the child". In this blog, we outline the general and additional considerations the Court must take into account when making parenting orders.

When making a parenting order, the Court must have regard to the best interests of the child as the **paramount** consideration, and **not** the interests or desires of either parent. What constitutes the child's best interest has been subject to significant legislative change. From 6 May 2024, the former content of section 60CC of the *Family Law 1975* ("the Act") was repealed and replaced with a shorter list of considerations.

The updated section 60CC of the Act now provides for six 'general considerations' for all parenting matters and two further 'additional considerations' if the child is an Aboriginal or Torres Strait Islander child.

General considerations when determining the best interests of the child

The six general considerations that the Court must have regard to in determining what is in the child's best interests are as follows:

1. What arrangements would promote the safety (including safety from [family violence, abuse, neglect, or other harm](#)) of the child and each person who has care of the child (whether or not a person has [parental responsibility](#) for the child);
2. Any [views expressed by the child](#);
3. The developmental, psychological, emotional and cultural needs of the child;
4. The capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
5. The benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so; and
6. Anything else that is relevant to the particular circumstances of the child.

In addition to the above, new subsection 60CC(2A) provides that in considering what arrangements would promote the safety of a child and each person who has care of the child, the Court must consider any history of family violence, abuse or neglect and any family violence order that applies to the child or member of the child's family.

Additional considerations for Aboriginal and Torres Strait Islander children

If the child is Aboriginal or Torres Strait Islander, the Act provides that the Court must consider the following matters:

1. The child's right to enjoy the child's Aboriginal or Torres Strait Islander culture by having the support, opportunity and encouragement necessary:
 - to connect with, and maintain their connection with members of their family and with their community, culture, country and language; and
 - to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - to develop a positive appreciation of that culture; and
1. The likely impact any proposed parenting order under this Part will have on that right.

The new content of section 60CC aims to simplify the considerations by the Court whilst also providing the Court with wide discretion to consider the facts relevant to each case.

Get help from a family lawyer

After separation, parents will have to make arrangements for the care and welfare of any children of the relationship. While this can often be done amicably, there are times when parents cannot agree and disputes arise.

If you're working through parenting arrangements after separation and you need assistance to ensure the best interests of the children are the paramount consideration, our family law team has expertise and experience in all aspects of parenting disputes.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

This article 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 E&A Lawyers.