



Best Interests of the Child

The best interests of the child are dealt with under section 60CC of the Family Law Act (Commonwealth). The Court has to look at certain things when making a decision about your child.

The Court will ALWAYS look at what is in the best interests of your child. This means the Court will make its decision based on what it believes is best for your child, NOT what you think is best for your child OR what is best for you. The Court has to consider various matters when deciding what is in the best interests of your child.

The Court will first look at what it calls the primary considerations. These are the benefit to your child of having a meaningful relationship with both parents AND the need to protect your child from any physical or psychological harm that could be caused by being subjected to or exposed to abuse, neglect and/or family violence.

The Court will then look at what it calls the additional considerations. These are the:

- Child's views (this takes into account the child's age, maturity and/or level of understanding; the older the child is the more weight is given to their views)
- Nature of the relationship of the child with each parent and other persons such as grandparents
- Willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent
- Likely effect of changes in the child's circumstances including the likely effect of any

separation from either parent, or any other children or people the child has been living with

- Extent to which parents have fulfilled or failed to fulfil their duties to the child. This may include participating in decisions about long term issues regarding the child and the time taken to communicate with and spend time with the child
- Practical difficulty and expense of the child spending time with and communicating with a parent
- Capacity of parents to provide for the needs including the child's emotional and intellectual needs
- Child's and parents' maturity, gender, lifestyle, culture, traditions and background
- A child's right to enjoy his or her Aboriginal or Torres Strait Islander culture
- Attitude of each parent to the child and the duties and responsibilities of parenthood
- Family violence and family violence orders (domestic violence and Apprehended Violence Orders)
- Orders least likely to lead to further proceedings
- Any other factor the Court thinks is relevant

After looking at the additional considerations, the Court then looks at the extent to which each parent has fulfilled, or failed to fulfil, their responsibilities as a parent. When looking at this the Court considers the extent to which each parent has, or has failed to:

- Fulfil their obligation to look after the child physically, mentally and financially

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- Share in making decisions about major long term issues regarding the child
- Spend time with the child
- Communicate with the child
- Help the other parent share in the decision making about major long term issues regarding the child
- Facilitate the child spending time with the other parent
- Facilitate the child communicating with the other parent

The Court also considers things that have happened since the separation such as where the child has lived, how much time each parent has spent with the child and why, whether child support is being paid and whether there has been domestic violence.

If you would like more information, the Family Law Act 1975 is available through www.austlii.edu.au or you can Google "Family Law Act 1975". There are also lots of publications on the Family Law Courts Homepage: www.familylawcourts.gov.au or Google "family law court".

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