

# PAGE PROVAN

*family and fertility lawyers*

## **FAMILY LAW ACT 1975 - SECTION 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
  - (ii) the likely impact any proposed parenting order under this Part will have on that right;

- (i) 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**

- (5) 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**

- (6) 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.