

# ***“The Best Interests of the Child”***

## **What does this mean?**

**Article by Townsville Family Lawyer, Emma Donald**

**22 July 2021**

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### **Why are the Best Interests of the Child so important?**

Anything to do with Children in the Family Law realm **must** be in the **best interests of the child/ren**.

The *Family Law Act (Cth)* 1975 does not refer to what is in Mum's or Dad's best interests!

Parents have rights and responsibilities, and generally (unless a Court orders otherwise) have parental responsibility. Parental responsibility is defined as, “*all the duties, powers, responsibilities and authority which, by law, parents have in relation to Children*”.

The *Family Law Act* also says that “*In deciding whether to make a particular parenting order in relation to a child, **a court must regard the best interests of the child as the paramount consideration***”.

So, what is in the best interests of the child? Read on, and I will tell you...

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### **Section 60CC of the Family Law Act.**

Section 60CC of the *Family Law Act 1975* is the section that tells us what a Court must consider when making a decision that will be in a child's best interests.

In determining what is in the child's best interests, the Court looks at “primary considerations” and “additional considerations”.

It is important for parents to understand that both the primary and the additional considerations focus entirely on the children, and their rights.

When looking at putting forward a proposal about care arrangements for children – it is best to read through these considerations first.

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### **The Primary Considerations**

There are two primary considerations the Court **must** consider in order to determine what care arrangements will be in the best interests of the Children.

The primary considerations are:

- The benefit to the child of having a meaningful relationship with both parents; and
- The need to protect the child from physical or psychological harm and from being subjected to or exposed to abuse, neglect or family violence.

In relation to these primary considerations, the Court says it must give greater weight to the second aspect - the need to protect children from physical or psychological harm, and from being subjected to or exposed to abuse, neglect or family violence. This will be given greater weight than the benefit of the child having a meaningful relationship with both parents.

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### **The Additional Considerations**

Aside from the two Primary Considerations, the Court must consider the following list of matters. Some of these may be applicable and some may not be.

- 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.
- The nature of the relationship of the child with either of the child's parents and other persons including any grandparent or other relative of the child.
- The extent to which each of the child's parents has taken, or failed to take, the opportunity to participate in making decisions about major long-term issues in relation to the child, to spend time with the child and to communicate with the child.
- The extent to which each of the child's parents has fulfilled, or failed to fulfill, the parent's obligations to maintain the child.
- The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either of his or her parents, or any other child or other person (including any grandparent or other relative of the child), with whom the child has been living.

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- 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.
  - The capacity of each of the child's parents and 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.
  - 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.
  - If the child is an Aboriginal child or a Torres Strait Islander child.
  - If 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 the likely impact any proposed parenting order will have on that right.
  - The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents.
  - Any family violence involving the child or a member of the child's family.
  - 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 nature of the order, the circumstances in which the order was made, any evidence admitted in proceedings from the order, any findings made by the court in, or in proceedings for, the order and any other relevant matter.
  - Whether it would be preferable to make the order what would be least likely to lead to the institution of further proceedings in relation to the child; and
  - Any other fact or circumstance that the court thinks is relevant.
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#### **Where to from here?**

It is always a good idea to obtain advice from an **experienced family lawyer** when making a proposal or a decision about a parenting agreement or consent orders.

We always recommend consulting with an experienced family lawyer to discuss your situation and obtain advice about what the Court might consider to be in your child/ren's best interest.

Everyone's situation is unique.

O'SheaDyer Solicitors Townsville have experienced family lawyers who practice exclusively in Family Law.

We offer first appointments for family law enquiries for a low fixed fee of \$220. You have an hour appointment with an experienced family lawyer where you obtain customised advice about your situation. You will also receive a 15 minute follow up call from the lawyer a week later.

Please call us to make an appointment. 47 725 155.

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