

Best interests of the child



This information sheet will help you to understand what is meant by “best interests” in family law and also how the Family Court determines what is in children’s “best interests” when making court orders.

This information sheet cannot replace legal advice. Getting legal advice about your individual situation is important, especially before formalising any agreement.

Domestic violence – if you are experiencing violence, including threats of violence or abuse from your ex-partner, please seek urgent legal advice.

“Best interests” in family law

When the court is making a decision about what arrangements should be put in place for children the court must focus on what is going to be in the best interests of the children.

The term “best interests” has a particular legal meaning. Family law considers children’s best interests are met by:

- Protecting children from physical or psychological harm, abuse, neglect or family violence (including being exposed to those things)
- Ensuring that children have the benefit of both of their parents having meaningful involvement in their lives
- Ensuring children receive proper parenting to help them reach their full potential
- Ensuring parents fulfil their responsibilities for the care, welfare and development of their children.

When parents are negotiating arrangements for children, family law also encourages parents to focus on what is in their children’s best interests.

Parents are encouraged to be realistic and practical. Many parents work out what is in their children’s best interests without the need to ask the court to make any decisions for them. Other parents need the assistance of the court to resolve

issues when they are unable to reach an agreement.

How the Family Court determines what is in a child’s best interests

To determine what arrangements are in the best interests of the children the court must consider primary (most important) and additional considerations.

The **primary considerations** are:

- The benefit to the children of having a meaningful relationship with both of their parents
- The need to protect children from physical or psychological harm, and from abuse, neglect or family violence that has been directed at them or they have seen or heard.

The court is required to place **more weight on protecting children’s safety** above the benefit of children having a meaningful relationship with both parents.

The **additional considerations** are:

- The views of children taking into account their maturity and level of understanding. Children do not have to express their views
- The relationship children have with each of their parents and other people, such as grandparents, brothers, sisters and other relatives of the children

- Whether each parent has taken, or failed to take, the opportunity to participate in making long term decisions about the children, as well as spent time with and communicated with the children
- The likely effect of changing where the children have been living, including separation from their parents, siblings or other people important in their lives
- The practicalities, including the cost, of children spending time with and communicating with a parent and whether this will affect their ability to have a relationship with that parent
- Whether the children's parents and others, including grandparents or other relatives, can provide for the children's needs, including emotional and intellectual needs
- The maturity, sex, lifestyle and background (including culture and traditions) of children and their parents, and anything else about the children the court thinks is relevant
- The right of Aboriginal and Torres Strait Islander children to enjoy their culture, including the right to enjoy that culture with other people who share that culture
- The parents' attitudes towards the children and the responsibilities of being a parent
- Any family violence involving the children or a member of the children's family
- If a family violence order currently applies or has applied in the past to your family, the court will look at:
 - the nature and circumstances of that order
 - any evidence that was put forward in the proceedings for the family violence order
 - any findings that the court made during the proceedings and
 - anything else that the court sees as relevant.
- Whether it is better to make an order which means the parents are less likely to seek further court orders about the children
- Any other fact or circumstance that the court thinks is relevant.

What is in the “best interests” of your children?

The court must look at each of these considerations to work out what is in your children's best interests. However, each family is different, and some of these considerations will be more important and relevant for your children than others.

For example, where the parents continue to live in the same street after separation, the expense of the children spending time with each parent might not be a major consideration for the court.

Parents should think about their children's circumstances and try to make decisions based on what is in their children's best interests.

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This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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