

Best interests of children

The Family Court decides what orders to make for a child by focusing on ensuring the best interests of the child are met, including by ensuring their safety. This infosheet explains the factors the court must take into account when working out what orders are in the best interests of a child.

What does family law focus on in cases about a child?

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What does “best interests of the child” mean?

The term “best interests of the child” has a special meaning in family law. The law requires the court to take into account a number of considerations when deciding what is in a child’s best interests.

The court is required to think about each of the best interest considerations in all cases.

However, as each child and family is different, some considerations will be more important than others in a particular case.

For example, for some families and children, cultural considerations will be very important while for other families and children this may not be relevant.

How does the court work out what is in the best interests of a child?

Currently, the law requires the court to take into account “primary” and “additional” considerations when deciding what arrangements are in the best interests of a child.

Changes to the law

From 6 May 2024, there will be changes to the law about what the court is required to take into account when deciding what arrangements are in the best interests of a child. These changes will apply only in cases where parents were married.

The court will take six (6) considerations into account when deciding what arrangements are in the best interests of a child. There will be an extra consideration for Aboriginal or Torres Strait Islander children.

It is expected that these changes will also apply in cases where parents were in a de facto relationship in the near future.

Ensuring the safety of a child will continue to be an important consideration in all cases.

What are the current best interest considerations?

Primary considerations

The primary considerations are:

- the need to protect the child from physical or psychological harm, abuse, neglect or family violence – including being exposed to abuse, neglect or family violence (for example, a child seeing or hearing family violence), and
- the benefit of the child having a meaningful relationship with both of their parents.

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Family violence

The court will look at any family violence involving the child or a member of the child’s family.

If a family violence order applies to your family, or there has been one in the past, the court will look at:

- the nature and circumstances of that order,
- any evidence that was put forward in the case and any findings made by the court, and
- anything else the court thinks is important.

Additional considerations

The additional considerations are:

- any views expressed by the child, taking into account their maturity and level of understanding,
- the relationship the child has with each parent and other people, including grandparents, siblings and other relatives,
- whether each parent has participated in making long-term decisions about the child and spent time with and communicated with the child,
- the likely effect of changing the child’s current situation, including separation from their parents, siblings or other important people in their lives,
- any practical issues, including the cost of the child spending time with and communicating with each parent and whether this will affect their ability to have a relationship with that parent,
- whether the child’s parents and others, including grandparents or other relatives, can provide for the child’s needs, including emotional and intellectual needs,
- the maturity, sex, lifestyle and background (including culture and traditions) of the child and their parents,
- the parents’ attitudes towards the child and the responsibilities of being a parent,
- whether it is better to make an order which means the parents are less likely to ask for more court orders in the future,
- for an Aboriginal or Torres Strait Islander child, their right to enjoy their culture, including enjoying it with other people who share that culture (the court must also consider the likely impact any proposed order may have on that right), and
- anything else about the child the court thinks is important to consider.

What are the new best interest considerations?

From 6 May 2024, in cases where parents were married, the best interest considerations will be:

- what arrangements will promote the safety of the child and each person who cares for the child (including safety from family violence, abuse, neglect, or other harm),
- any views expressed by the child,
- the developmental, psychological, emotional and cultural needs of the child,
- the capacity of each person who has (or is asking to have) parental responsibility for the child to provide for their child's developmental, psychological, emotional and cultural needs,
- the benefit to the child of being able to have a relationship with the child's parents, and other significant people in their life, where it is safe to do so, and
- anything else that is important to the individual situation of the child.

Aboriginal and Torres Strait Islander children

For an Aboriginal or Torres Strait Islander child, the court must also consider their right to enjoy their culture.

This includes having the opportunity to connect with and maintain their connection with members of their family and with their community, culture, country and language.

The court must also consider the likely impact that any proposed order may have on that right.

Safety

When the court considers what arrangements will promote the safety of the child and each person who care for the child, it must think about:

- any family violence, abuse or neglect that has occurred in the past involving the child or a person caring for the child, and
- any family violence order that applies or has applied in the past to the child or a member of the child's family.

What should separating parents focus on?

If you and your ex-partner are going through a separation and working out arrangements for your child, it is important to focus on what arrangements will be in their best interests.

There are no set parenting arrangements for a child after separation because every child and family situation are unique. You and your ex-partner can put in place arrangements that work best for your child and your family.

Even within one family, different children may have different needs. For example, different arrangements may need to be made for younger children and older children.

It may be helpful to think about the best interest considerations set out in this infosheet when working out arrangements for your child.

The law is changing to make things simpler. However, regardless of whether the current or new considerations apply in your case – the safety of a child remains an important priority. If you are going through a separation and have concerns about your safety or the safety of your child, it is recommended you obtain legal advice.

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