



What does “best interests of the child” mean in family law?

Author: [Jane Holford](#)

Email: jane@smithfamilylaw.com.au

Date: **Sunday July 9, 2023**

While many separating parents are able to come to an agreement between themselves about arrangements for the care of their children, for some, there can be disputes about parenting arrangements. Where parents cannot agree to parenting arrangements [outside of Court](#), parties can make an application to the Court to make a decision. The Court is only able to make orders that are in the “best interests of the children”.

In this blog, we look at how the “best interests of the children” is considered and applied in family law matters.

What kinds of parenting orders can the Court make?

The most important consideration under the [Family Law Act](#) is that arrangements for children must be made in “the best interests of the children” and not the interests of the parents. The Court is not concerned with the competing interests of the parents.

The priority of each parent must be to act and behave in a way that is consistent with these best interests of the children. This may involve actively encouraging your child to spend time with your former partner. Although the relationship between you and your partner may have ended, your relationship as parents is ongoing.

Orders made by the Court cover all aspects of childrens' lives and are phrased in the following simplified terms:

- [Parental responsibility](#) – this refers to long term decisions in relation to a child’s care, welfare and development.
- Live with - refers to who the child will live with.

- Spend time with - refers to who the child will spend time with.
- Communicates with - refers to communication, including telephone communication.

Terms such as “custody”, “guardianship”, and “access” are no longer used.

[Section 60CC of the Family Law Act](#) sets out both primary and additional considerations that the Court must deal with when determining what is in a child’s best interest.

Best interests of the child - general considerations

The general considerations under the Family Law Act are:

- The need to promote the safety of the child and each person who has care of the child, whether or not this person has parental responsibility of 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 proposed to have parental responsibility for the child to provide for the 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 people who are significant to the child, where it is safe to do so.
- Anything else that is relevant to the particular circumstances of the child.

Best interests of the child - further considerations applicable to Aboriginal or Torres Strait Islander children

The further considerations under the *Family Law Act* specific to Aboriginal or Torres Strait Islander children are:

- The child’s right to enjoy their Aboriginal or Torres Strait Islander culture by having the opportunity to connect with, and maintain their connection with, members of their family and with their community, culture, country and language.
- The likely impact of any proposed parenting order on the child’s right to enjoy their Aboriginal or Torres Strait Islander culture.

The general and further considerations are non-hierarchical and focus on a core list of considerations to best promote the child’s welfare and development. The Court is not required to give more weight to any one factor over the others (although the Court still has the discretion to place whatever weight as they deem appropriate to a certain consideration).

However, when determining what is best for the child/children, the Court will give greater weight to the need to protect a child from physical or psychological harm or from being subjected to, or exposed to, abuse, neglect or family violence over the benefit to a child of having a meaningful relationship with both parents.

The objects underpinning this legislation are as follows:

- To ensure that the best interests of the child are met, including by ensuring their safety; and
- To give effect to the [Convention on the Rights of the Child](#) in New York on 20 November 1989.

To the extent that the *Family Law Act* departs from the Convention on the Rights of the Child, the *Family Law Act* will prevail.

Get help from a family lawyer

It's not unusual for parents to have different views about what is in their child's best interests.

If you're working through parenting arrangements after separation and you need assistance to ensure the best interests of the children are paramount, our family lawyers have significant expertise and experience in all aspects of parenting disputes.

Contacting Smith Family Law

[03 8625 8957](tel:0386258957)

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.