

Good Story Chinese Translation Pty Ltd 精彩人生翻译社私人有限公司

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Translation/翻译件

《家事法 1975 年版》

60B 本章的目的及其背后的原则

- (1) 本章的目的是通过以下方式确保儿童的最佳利益:
- (a) 确保儿童的父母双方都能有意义地参与其生活, 并在最大程度上符合儿童的最佳利益; 且
 - (b) 保护儿童免于遭受或目睹虐待、忽视或家庭暴力所造成的身心伤害; 且
 - (c) 确保儿童得到充分和适当的养育, 以帮助他们充分发挥潜力; 且
 - (d) 确保父母履行其在子女照顾、福利和发展上附有的职责和义务。



- (2) 这些目标背后的基本原则如下 (除非它违背或将违背儿童的最佳利益):
- (a) 无论父母是否结婚、分居、从未结婚或从未共同生活, 儿童都有权了解其父母并得到父母的照顾; 且
 - (b) 儿童有权与父母及其他在儿童的照顾、福利和发展上扮演重要角色的人士 (如祖父母和其他亲属) 进行定期相处和交流; 且
 - (c) 父母共同分担子女的照顾、福利和发展方面的义务和责任; 且
 - (d) 父母应在子女的未来养育事宜上达成一致意见; 且
 - (e) 儿童有权享受其文化权利 (包括与拥有该文化背景的其他人一起享受这种文化的权利)。
- (3) 为了达到第 (2) (e) 项, 土著或托雷斯海峡岛民儿童享有的土著或托雷斯海峡岛民的文化权利包括以下:
- (a) 与该文化保持联系; 且
 - (b) 获得必要的支持、机会和鼓励来从事以下:
 - (i) 根据儿童的年龄、发育水平以及其观点, 探索该文化的全部内容; 且
 - (ii) 发展对该文化的正面欣赏。
- (4) 本章的另一个目的是使 1989 年 11 月 20 日在纽约签署的《儿童权利公约》生效。

60CA 儿童的最佳利益是在制定儿童监护令时要考虑的最重要因素

在决定是否针对儿童作出特定的监护令时, 法院必须将儿童的最佳利益视为最重要的考虑因素。

60CC 法院如何确定儿童的最佳利益

确定儿童的最佳利益

- (1) 在符合第 (5) 款的规定下, 在决定儿童的最佳利益时, 法院必须考虑第 (2) 及 (3) 款所列的事宜。

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主要考虑因素

- (2) 主要考虑因素如下:
- (a) 让儿童与其父母双方建立有意义的关系的好处; 及
 - (b) 保护儿童免于遭受或目睹虐待、忽视或家庭暴力所造成的身心伤害; 且
- (2A) 在考虑第 (2) 款所列的因素时, 法院须更加重视第 (2) (b) 项所列的考虑。

其他考虑因素

- (3) 其他考虑因素如下:
- (a) 儿童所表达的任何意见, 以及法院考虑儿童意见重要性的任何相关因素 (例如儿童的成熟或理解程度);
 - (b) 儿童与以下人士关系的性质:
 - (i) 儿童的每个父母; 及
 - (ii) 其他人 (包括该儿童的祖父母或其他亲属);
 - (c) 儿童的每个父母在多大程度上利用或未能利用该机会来:
 - (i) 参与有关儿童的重大长期问题的决定; 及
 - (ii) 与儿童共处; 及
 - (iii) 与儿童沟通;
 - (ca) 每各儿童的父母在多大程度上履行或未能履行父母抚养子女的义务;
 - (d) 儿童情况的任何变化可能产生的影响, 包括以下人士与儿童的任何分离可能对儿童造成的影响:
 - (i) 儿童的其中一方父母; 或
 - (ii) 与其生活在一起的任何其他儿童或人士 (包括该儿童的祖父母或其他亲属);
 - (e) 儿童与一方父母共处和沟通的实际困难和费用, 以及该困难或费用是否会严重影响儿童定期与父母保持个人关系和直接接触的权利;
 - (f) 以下能力:
 - (i) 儿童的每个父母; 及
 - (ii) 任何其他人 (包括该儿童的祖父母或其他亲属);在满足儿童情感和智力需要方面的能力;
 - (g) 儿童及其各父母的成熟度、性别、生活方式及背景 (包括生活方式、文化及传统) 以及法院认为相关的儿童的任何其他特征;
 - (h) 如果该儿童是土著或托雷斯海峡岛民儿童:
 - (i) 儿童享有其原住民或托雷斯海峡岛民文化的权利 (包括与拥有该文化的其他人一起享受该文化的权利); 和
 - (ii) 根据本章提出的任何拟议监护令可能对此权利产生的影响;
 - (i) 儿童的每个父母对儿童以及对其作为父母的养育责任表现出来的态度;
 - (j) 涉及儿童或儿童家庭成员的任何家庭暴力;
 - (k) 如果家庭暴力庭令在该儿童或该儿童的家庭成员身上即将或已经生效 - 考虑到以下因素, 来决定可从该庭令中得出的任何相关推论:
 - (i) 该庭令的性质;
 - (ii) 做出庭令时的情况;



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- (iii) 在该庭令的法律程序中被接纳的任何证据;
- (iv) 法院在该庭令中或该庭令的诉讼程序中得出的任何结论;
- (v) 任何其他有关事宜;
- (l) 是否应作出最不可能导致就该儿童提起进一步诉讼的庭令;
- (m) 法院认为有关的任何其他事实或情况。

协议庭令

- (5) 如果法院正在考虑是否采用诉讼各方协议达成的庭令, 法院可以(但无须)考虑第(2)或(3)款中所列的全部或任何事项。

享受土著或托雷斯海峡岛民文化的权利

- (6) 为了第(3)(h)项的需要, 土著或托雷斯海峡岛民儿童享有其原住民或托雷斯海峡岛民文化的权利包括:

- (a) 与该文化保持联系; 且
- (b) 获得必要的支持、机会和鼓励:
 - (i) 根据儿童的年龄和发育水平以及其观点, 探索该文化的全部内容; 且
 - (ii) 发展对该文化的正面欣赏。



60CH 根据儿童福利法通知法院有关的照顾安排

- (1) 如果诉讼的当事方知道该儿童或其他儿童(该儿童的家庭成员)目前是在儿童福利法下接受照顾(不论如何描述), 则该当事人必须通知法院此事。
- (2) 如果非诉讼当事人知道该儿童或其他儿童(该儿童的家庭成员)目前是在儿童福利法下获得照顾(无论如何描述), 此人可通知法院此事。
- (3) 未向法院通报此事并不影响法院作出的任何庭令的有效性。但是, 本款不会限制第69ZK条的运作(儿童福利法不受影响)。

60CI 告知法院有关规定的州或领地机构接到的通知和展开的调查

- (1) 如果:
 - (a) 诉讼一方知道该儿童或其他儿童(该儿童的家庭成员)过去或目前是以下事件的对象:
 - (i) 规定的州或领地机构收到的通知或报告(不论如何描述)的对象; 或
 - (ii) 规定的州或领地机构进行的调查或评估(无论如何描述)的对象; 且
 - (b) 有关虐待或虐待指称、怀疑或风险的通知、报告、调查或评估;
该方必须告知法院此事。
- (2) 如果:
 - (a) 非诉讼当事人知道该儿童或其他儿童(该儿童的家庭成员)目前或过去是以下事件的对象:

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- (i) 规定的州或领地机构收到的通知或报告（不论如何描述）的对象；或
 - (ii) 规定的州或领地机构进行的调查或评估（无论如何描述）的对象；且
- (b) 有关虐待或虐待指称、怀疑或风险的通知、报告、调查或评估；
该人可将此事通知法院。
- (3) 未向法院通报此事并不影响法院作出的任何庭令的有效性。
- (4) 在本条中：
规定的州或领地机构是指为第 69ZW 条而规定的州或领地机构。

61DA 在制定监护令时推定父母责任的平等分担

- (1) 法院在作出与子女有关的监护令时，必须推定子女的父母共同对子女承担平等的父母责任是符合子女的最佳利益的。
- (2) 如果有合理依据相信该子女的父母（或与该子女的父母一起生活的人士）具有以下行为，则该推定不适用：
- (a) 虐待此儿童或当时是此父母的家庭成员（或其他人士的家庭成员）的其他儿童；或
 - (b) 家庭暴力。
- (3) 当法院作出临时庭令时，除非法院认为在作出该庭令时此推定不合适当时的情况，否则该推定适用。
- (4) 推定可以通过满足法院要求的证据作出反驳，即儿童父母对子女共同承担平等的父母责任不符合子女的最佳利益。



64B 监护令及相关术语的含义

- (1) **监护令**就是：
- (a) 根据本部份作出的庭令（包括进一步庭令作出前的临时庭令）处理第（2）款所述的事宜；或
 - (b) 根据本部份作出的庭令，用于解除、更改、暂停或恢复（a）项所述的庭令或部分庭令。
- 但是，第 12 节 E 小节的声明或庭令不是**监护令**。
- (2) 监护令可以涉及以下一项或多项事宜：
- (a) 将与儿童同住的一个或多人；
 - (b) 儿童与其他一人或多人共度的时间；
 - (c) 对儿童的父母责任分配；
 - (d) 如果两个或以上的人士要分担父母对子女的责任 - 这些人在履行此等责任的过程中做决定时将使用的相互协商方式；
 - (e) 儿童与另外一人或多人的通讯；
 - (f) 子女抚养费；
 - (g) 在以下人士的需要或情况变化时向法院申请更改庭令之前应采取的步骤：

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- (i) 该庭令所涉及的儿童; 或
 - (ii) 庭令涉及的诉讼方;
 - (h) 有关庭令条款或操作的争议解决程序;
 - (i) 儿童的照顾、福利或发展的任何方面或儿童的父母责任的任何其他方面。
- 本款所指的人士可包括该子女的父母或该子女的父母以外的人士 (包括该子女的祖父母或其他亲属)。

- (3) 在不限第 (2) (c) 项的情况下, 该庭令可以处理有关子女长期重大问题决定的责任分配。
- (4) 第 (2) (e) 项所提述的通讯包括 (但不限于) 以下通讯方式:
 - (a) 信件; 及
 - (b) 电话、电子邮件或任何其他电子方式。



- (4A) 在不限第 (2) (g) 及 (h) 项的情况下, 监护令可规定诉讼各方必须咨询家庭纠纷调解员, 以协助:
 - (a) 解决有关庭令条款或操作的任何争议; 或
 - (b) 就庭令的变更达成协议。

- (5) 在监护令涉及第 (2) (f) 项所述事项 (如有), 该庭令则是**儿童抚养费庭令**。

- (6) 就本法而言:
 - (a) 规定儿童与某人同住的监护令是**有利于**该人的; 且
 - (b) 规定某人与儿童共处的监护令是**有利于**该人的; 且
 - (c) 规定儿童与某人通讯的监护令是**有利于**该人的; 且
 - (d) 监护令:
 - (i) 将儿童的父母责任分配给某人; 或
 - (ii) 规定某人与其他人分担父母对子女的责任;
是**有利于**那个人的。

- (9) 在本条中:
 - 该法**包括:
 - (a) 标准的法院规则; 和
 - (b) 相关的联邦巡回法院规则。

65DAA 法院在某些情况下考虑每个父母与儿童相处时间的均等或大量且重要的分配

均等时间

- (1) 在符合第 (6) 款的规定下, 如果监护令规定 (或将规定) 儿童的父母应对该子女共同负有平等的父母责任, 法院则必须:
 - (a) 考虑每位父母与儿童的相处时间均等是否符合儿童的最佳利益; 且
 - (b) 考虑每位父母与儿童的相处时间均等是否合理可行; 且

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- (c) 如是，则考虑作出庭令（或在庭令中作出规定），让儿童与每名父母有均等的相处时间。

大量及重要的相处时间

- (2) 除第(6)款另有规定外，如符合下列条件：
- (a) 监护令规定（或将规定）儿童的父母应对该子女共同负有平等的父母责任；且
- (b) 法庭不作出庭令（或在庭令中不规定）要儿童与每名父母有均等的相处时间；法院则必须：
- (c) 考虑儿童与每位父母有大量及重要的相处时间是否符合儿童的最佳利益；且
- (b) 考虑儿童有与每位父母有大量及重要的相处时间是否合理可行；且
- (e) 如是，则考虑作出庭令（或在庭令中作出规定），让儿童与每名父母有大量和重要的相处时间。



- (3) 就第(2)款而言，只有在以下情况下，儿童才会被视为与父母一起度过**大量且重要**的时间：
- (a) 儿童与父母一起度过的时间包括：
- (i) 周末和节假日的日子；和
- (ii) 非周末和节假日的日子；且
- (b) 儿童与父母一起度过的时间允许父母参与以下：
- (i) 儿童的日常生活；和
- (ii) 对儿童特别重要的场合和事件；且
- (c) 儿童与父母一起度过的时间允许儿童参与父母的特别重要场合和事件。
- (4) 第(3)款并不限制法院在决定儿童与父母的相处时间是否大量和重要时可以考虑的其他事项。

合理的可行性

- (5) 为了第(1)及(2)款的需要，在决定儿童与每个父母的相处时间均等或大量和重要是否具有合理的可行性时，法院必须考虑以下：
- (a) 父母的住址彼此相隔距离；和
- (b) 父母目前及将来安排每名父母与儿童进行均等或大量及重要相处时间的能力；和
- (c) 父母目前和未来彼此沟通的能力和解决在执行此类安排过程中可能出现的困难的能力；和
- (d) 该安排会对该儿童造成的影响；和
- (e) 法院认为相关的其他事宜。

协议庭令

- (6) 如果：
- (a) 法院正在考虑是否让所有诉讼当事方协议作出监护令；且
- (b) 监护令规定（或将规定）儿童的父母应对该子女共同负有平等的父母责任；
- 法院可以（但无须）考虑第(1)(a)至(c)项或第(2)(c)至(e)项（如适用）所述的事宜。

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(7) 为免生疑问, 第(6)款并不影响第60CA条在监护令上的应用。

67Z 利益关联人提出虐待儿童的指责

- (1) 如果根据本法进行的诉讼中的利害关系人指称诉讼涉及的儿童被虐待或有可能被虐待, 则本条适用。
- (2) 此利益关联人必须在审理此案的法院按规定的格式提交通知, 并将该通知的真实副本送达被指称曾经或有可能虐待该儿童的人士。
- (3) 如根据第(2)款发出的通知书已提交法院, 则注册处经理必须在切实可行的范围内尽快通知规定的儿童福利机构。
- (4) 在本条中:

根据本法, 诉讼的**利益关联人**是指:

- (a) 诉讼的一方; 或
- (b) 独立儿童律师, 在诉讼中代表儿童的利益; 或
- (c) 为了本项需要, 法规要求的任何其他人士。

规定格式是指适用的法院规则所规定的格式。



67ZBA 利益相关人提出虐待儿童的指责

- (1) 如果在根据本章申请有关某儿童的庭令的法律程序中, 利害关系人声称以下事件, 以此作为法院是否应作出或拒绝作出该庭令的有关考虑因素, 则本条适用:
 - (a) 诉讼一方是家庭暴力的施暴人; 或
 - (b) 诉讼一方有可能成为家庭暴力的施暴人。
- (2) 有关人士必须在进行该诉讼的法院以规定格式提交通知, 并将该通知的真实副本送达第(1)(a)或(b)款所提的一方。
- (3) 如果所指称的家庭暴力(或家庭暴力风险)是针对儿童的:
 - (a) 提出指称的利害关系人必须根据本条第(2)款或根据第67Z(2)款提交和送达通知书(但无须同时根据这两款提交及送达通知书); 且
 - (b) 如该通知是根据本条第(2)款提交的, 则注册处经理必须采用与根据第67Z(2)款提交通知一样的方式, 处理该通知。
- (4) 在本条中:

根据本章申请有关某儿童的庭令的法律程序中, **利益关联人**是指:

- (a) 诉讼的一方; 或
- (b) 独立儿童律师, 在诉讼中代表儿童的利益; 或
- (c) 为了本项需要, 法规要求的任何其他人士。

规定格式是指适用的法院规则所规定的格式。

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65DA 儿童监护令

- (1) 本条适用于法院作出儿童监护令的情况。
- (2) 法院有责任在庭令中加入下列详情:
 - (a) 该庭令所规定的义务; 和
 - (b) 如果某人违反该庭令可能产生的后果。

62B 法院有义务告知第七章庭令适用的人士有关家庭咨询、家庭纠纷解决和其他家庭服务的信息

如果法院在诉讼中根据本章作出庭令, 法院必须告知诉讼各方有关家庭咨询服务、家庭纠纷解决服务以及其他可用于帮助当事人调整该庭令后果的课程、计划和服务。



601 在申请第七章庭令前出席家庭纠纷调解

本条的目标

- (1) 本条的目的是确保所有可能对根据本章庭令（第七章庭令）处理的事项有争议的人士, 在申请第七章庭令前, 真正尽力通过家庭纠纷调解服务解决该争议。

第一阶段（从开始日至 2007 年 6 月 30 日）

- (2) 《2004 年家庭法规则》中的争议解决条款规定在向澳大利亚家事法院申请儿童监护令之前必须遵守该争议调解的要求。
- (3) 在本款的作用下, 《2004 年家庭法规则》的争议解决条款也适用于向法院（澳大利亚家庭法院以外的法庭）提出的儿童监护令申请。那些规定经必要的修改适用于此类申请。
- (4) 第（3）款适用于儿童监护令的申请, 如果申请的提出符合以下:
 - (a) 在本条开始日或之后; 且
 - (b) 在 2007 年 7 月 1 日之前。

第二阶段（2007 年 7 月 1 日至 2008 年 6 月 30 日）

- (5) 在下列情况下, 第（7）至（12）款适用于有关儿童的第七章庭令的申请:
 - (a) 申请于 2007 年 7 月 1 日或之后及 2008 年 7 月 1 日前提出; 且
 - (b) 诉讼的任何一方均未在 2007 年 7 月 1 日之前就该儿童提出过第七章庭令的申请。

第三阶段（自 2008 年 7 月 1 日起）

- (6) 第（7）至（12）款适用于 2008 年 7 月 1 日或之后提出的与儿童有关的所有第七章庭令申请。

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在申请儿童监护令之前通过家庭纠纷调解来解决纠纷的要求

- (7) 除第(9)款另有规定外,根据本法行使司法管辖权的法院不得进行有关儿童的第七章庭令申请的聆讯,除非申请人向法院提交家庭纠纷调解执业者提供给申请人的第(8)款中所指的证书。证书必须与第七章的申请一起提交。

家庭纠纷解决执业者发出的证书

- (8) 家庭纠纷解决执业者可向某人提供以下其中一种证书:

- (a) 一份证书,证明该人没有就该庭令所处理的问题或事项出席由该执业者及该诉讼另一方或多方参与的家庭纠纷调解,但该人没有这样做是由于诉讼的另一方或多方拒绝或未能出席;
- (aa) 一份证书,证明该人没有就该项庭令所涉及的问题出席由该执业者及该庭令的另一方或多方参与的家事纠纷解决,因为该执业者在考虑有关本项事宜的法规后,认为进行拟议的家庭纠纷解决是不恰当的;
- (b) 一份证书,表明该人与执业者和诉讼的另一方或多方就该庭令所涉及的问题或事项进行了家庭纠纷调解,并且所有与会者都真正地努力尝试解决问题;
- (c) 一份证书,证明该人与执业者和诉讼的另一方或多方就该庭令所涉及的问题或事项进行了家庭纠纷调解,但该人、诉讼的对方或其他某方没有真正地努力尝试解决问题;
- (d) 一份证书,证明此人起初就该项庭令所涉及的问题出席由该执业者及该庭令的另一方或多方参与的家事纠纷解决,但该执业者在考虑有关本项事宜的法规后,认为继续进行家庭纠纷解决是不恰当的;



注: 当申请人根据第(7)款提交其中一种证书时,法院在决定是否做出庭令转介诉讼各方进行家庭纠纷调解(见第130条)及要求一方支付法律费用(见第117条)时,可以将此类证书考虑在内。

例外

- (9) 如有以下情况,第(7)款不适用于就儿童提出的第七章庭令的申请:

- (a) 申请人正在申请此庭令:
- (i) 将是经诉讼各方同意而作出的;或
 - (ii) 回应诉讼另一方的第七章庭令申请;或
- (b) 法院信纳有合理的理由相信以下:
- (i) 诉讼一方曾虐待儿童;或
 - (ii) 如果延迟申请该庭令,可能会有虐待儿童的风险;或
 - (iii) 诉讼一方是家庭暴力的施暴人;或
 - (iv) 诉讼一方有可能成为家庭暴力的施暴人;或
- (c) 满足以下所有条件:
- (i) 该申请是就某一特定事宜而作出的;
 - (ii) 在提出申请前的12个月内,已就该问题作出过第七章庭令的申请;
 - (iii) 该申请是就某人违反该庭令而提出的;
 - (iv) 法院信纳其有理由相信该人的行为方式严重无视其在该庭令下的责任;或
- (d) 申请是在紧急情况下提出的;或
- (e) 诉讼的一方或多方无法有效参与家庭纠纷调解(无论是因为某种形式的失能,或是远离争议解决服务或其他原因);或

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(f) 符合法规指明的其他情况。

在例外情况适用时, 转介家庭纠纷调解

(10) 如果:

(a) 某人申请第七章庭令; 且

(b) 在申请庭令之前, 此人并未就有关该庭令所处理的问题与家庭纠纷调解执业者及诉讼的另一方或多方进行家庭纠纷调解; 且

(c) 第(7)款因第(9)款而不适用于该项申请;

法院必须考虑作出庭令, 要求此人就此一个或多个问题, 与家庭纠纷调解执业者以及诉讼的另一方或多方进行家庭纠纷调解。

(11) 以下的有效性:

(a) 申请第七章庭令的诉讼; 或

(b) 在该等诉讼中作出的任何庭令;

不会因诉讼未能遵守第(7)款而受影响。

在本条中:

《2004年家庭法规则》的**争议解决条款**是指:

(a) 这些规则的第1.05条;

(b) 该等规则附表1的第2章;

中有关处理解决争议的部分。



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Original/原件

FAMILY LAW ACT 1975

60B Objects of Part and principles underlying it

- (1) The objects of this Part are to ensure that the best interests of children are met by:
 - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
 - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
 - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
 - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):
 - (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
 - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
 - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
 - (d) parents should agree about the future parenting of their children; and
 - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child's or 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.
- (4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.



60CA Child's best interests paramount consideration in making a parenting order

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.

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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.

- (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;

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- (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.

60CH Informing court of care arrangements under child welfare laws

- (1) If a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that party must inform the court of the matter.
- (2) If a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that person may inform the court of the matter.
- (3) Failure to inform the court of the matter does not affect the validity of any order made by the court. However, this subsection does not limit the operation of section 69ZK (child welfare laws not affected).

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60CI Informing court of notifications to, and investigations by, prescribed State or Territory agencies

- (1) If:
- (a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:
 - (i) a notification or report (however described) to a prescribed State or Territory agency; or
 - (ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and
 - (b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;
- that party must inform the court of the matter.

- (2) If:
- (a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:
 - (i) a notification or report (however described) to a prescribed State or Territory agency; or
 - (ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and
 - (b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;
- that person may inform the court of the matter.



- (3) Failure to inform the court of the matter does not affect the validity of any order made by the court.
- (4) In this section:

prescribed State or Territory agency means an agency that is a prescribed State or Territory agency for the purpose of section 69ZW.

61DA Presumption of equal shared parental responsibility when making parenting orders

- (1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.
- (2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:
- (a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or
 - (b) family violence.
- (3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.
- (4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

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64B Meaning of *parenting order* and related terms

(1) A *parenting order* is:

- (a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or
- (b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).

However, a declaration or order under Subdivision E of Division 12 is not a *parenting order*.

(2) A parenting order may deal with one or more of the following:

- (a) the person or persons with whom a child is to live;
- (b) the time a child is to spend with another person or other persons;
- (c) the allocation of parental responsibility for a child;
- (d) if 2 or more persons are to share parental responsibility for a child—the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
- (e) the communication a child is to have with another person or other persons;
- (f) maintenance of a child;
- (g) the steps to be taken before an application is made to a court for a variation of the order to take account of the changing needs or circumstances of:
 - (i) a child to whom the order relates; or
 - (ii) the parties to the proceedings in which the order is made;
- (h) the process to be used for resolving disputes about the terms or operation of the order;
 - (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

The person referred to in this subsection may be, or the persons referred to in this subsection may include, either a parent of the child or a person other than the parent of the child (including a grandparent or other relative of the child).

(3) Without limiting paragraph (2)(c), the order may deal with the allocation of responsibility for making decisions about major long-term issues in relation to the child.

(4) The communication referred to in paragraph (2)(e) includes (but is not limited to) communication by:

- (a) letter; and
- (b) telephone, email or any other electronic means.

(4A) Without limiting paragraphs (2)(g) and (h), the parenting order may provide that the parties to the proceedings must consult with a family dispute resolution practitioner to assist with:

- (a) resolving any dispute about the terms or operation of the order; or
- (b) reaching agreement about changes to be made to the order.

(5) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(f), the order is a *child maintenance order*.

(6) For the purposes of this Act:

- (a) a parenting order that provides that a child is to live with a person is *made in favour* of that person; and
- (b) a parenting order that provides that a child is to spend time with a person is *made in favour* of that person; and



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- (c) a parenting order that provides that a child is to have communication with a person is *made in favour* of that person; and
 - (d) a parenting order that:
 - (i) allocates parental responsibility for a child to a person; or
 - (ii) provides that a person is to share parental responsibility for a child with another person; is *made in favour* of that person.
- (9) In this section:
- this Act* includes:
- (a) the standard Rules of Court; and
 - (b) the related Federal Circuit Court Rules.

65DAA Court to consider child spending equal time or substantial and significant time with each parent in certain circumstances



Equal time

- (1) Subject to subsection (6), if a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:
- (a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
 - (b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
 - (c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

Substantial and significant time

- (2) Subject to subsection (6), if:
- (a) a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child; and
 - (b) the court does not make an order (or include a provision in the order) for the child to spend equal time with each of the parents;
- the court must:
- (c) consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child; and
 - (d) consider whether the child spending substantial and significant time with each of the parents is reasonably practicable; and
 - (e) if it is, consider making an order to provide (or including a provision in the order) for the child to spend substantial and significant time with each of the parents.
- (3) For the purposes of subsection (2), a child will be taken to spend *substantial and significant time* with a parent only if:
- (a) the time the child spends with the parent includes both:
 - (i) days that fall on weekends and holidays; and
 - (ii) days that do not fall on weekends or holidays; and
 - (b) the time the child spends with the parent allows the parent to be involved in:
 - (i) the child's daily routine; and

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- (ii) occasions and events that are of particular significance to the child; and
 - (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.
- (4) Subsection (3) does not limit the other matters to which a court can have regard in determining whether the time a child spends with a parent would be substantial and significant.

Reasonable practicality

- (5) In determining for the purposes of subsections (1) and (2) whether it is reasonably practicable for a child to spend equal time, or substantial and significant time, with each of the child's parents, the court must have regard to:
- (a) how far apart the parents live from each other; and
 - (b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
 - (c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and
 - (d) the impact that an arrangement of that kind would have on the child; and
 - (e) such other matters as the court considers relevant.



Consent orders

- (6) If:
- (a) the court is considering whether to make a parenting order with the consent of all the parties to the proceedings; and
 - (b) the order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child;
- the court may, but is not required to, consider the matters referred to in paragraphs (1)(a) to (c) or (if applicable) the matters referred to in paragraphs (2)(c) to (e).
- (7) To avoid doubt, subsection (6) does not affect the application of section 60CA in relation to a parenting order.

67Z Where interested person makes allegation of child abuse

- (1) This section applies if an interested person in proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.
- (2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.
- (4) In this section:

interested person in proceedings under this Act, means:

- (a) a party to the proceedings; or
 - (b) an independent children's lawyer who represents the interests of a child in the proceedings;
- or

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(c) any other person prescribed by the regulations for the purposes of this paragraph.

prescribed form means the form prescribed by the applicable Rules of Court.

67ZBA Where interested person makes allegation of family violence

- (1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:
 - (a) there has been family violence by one of the parties to the proceedings; or
 - (b) there is a risk of family violence by one of the parties to the proceedings.
- (2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).



- (3) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child):
 - (a) the interested person making the allegation must either file and serve a notice under subsection (2) of this section or under subsection 67Z(2) (but does not have to file and serve a notice under both those subsections); and
 - (b) if the notice is filed under subsection (2) of this section, the Registry Manager must deal with the notice as if it had been filed under subsection 67Z(2).
- (4) In this section:

interested person in proceedings for an order under this Part in relation to a child, means:

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of the child in the proceedings;
or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

prescribed form means the form prescribed by the applicable Rules of Court.