

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.

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;
 - (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).

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.

60I Attending family dispute resolution before applying for Part VII order

Object of this section

- (1) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a ***Part VII order***) make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.

Phase 1 (from commencement to 30 June 2007)

- (2) The dispute resolution provisions of the *Family Law Rules 2004* impose the requirements for dispute resolution that must be complied with before an application is made to the Family Court of Australia for a parenting order.
- (3) By force of this subsection, the dispute resolution provisions of the *Family Law Rules 2004* also apply to an application to a court (other than the Family Court of Australia) for a parenting order. Those provisions apply to the application with such modifications as are necessary.
- (4) Subsection (3) applies to an application for a parenting order if the application is made:

- (a) on or after the commencement of this section; and
- (b) before 1 July 2007.

Phase 2 (from 1 July 2007 to 30 June 2008)

- (5) Subsections (7) to (12) apply to an application for a Part VII order in relation to a child if:
 - (a) the application is made on or after 1 July 2007 and before 1 July 2008; and
 - (b) none of the parties to the proceedings on the application has applied, before 1 July 2007, for a Part VII order in relation to the child.

Phase 3 (from 1 July 2008)

- (6) Subsections (7) to (12) apply to all applications for a Part VII order in relation to a child that are made on or after 1 July 2008.

Requirement to attempt to resolve dispute by family dispute resolution before applying for a parenting order

- (7) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

Certificate by family dispute resolution practitioner

- (8) A family dispute resolution practitioner may give one of these kinds of certificates to a person:
 - (a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;
 - (aa) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;
 - (b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;
 - (c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues;
 - (d) a certificate to the effect that the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the family dispute resolution.

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family

dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

Exception

- (9) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:
- (a) the applicant is applying for the order:
 - (i) to be made with the consent of all the parties to the proceedings; or
 - (ii) in response to an application that another party to the proceedings has made for a Part VII order; or
 - (b) the court is satisfied that there are reasonable grounds to believe that:
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
 - (iii) there has been family violence by one of the parties to the proceedings; or
 - (iv) there is a risk of family violence by one of the parties to the proceedings; or
 - (c) all the following conditions are satisfied:
 - (i) the application is made in relation to a particular issue;
 - (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
 - (iii) the application is made in relation to a contravention of the order by a person;
 - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or
 - (d) the application is made in circumstances of urgency; or
 - (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
 - (f) other circumstances specified in the regulations are satisfied.

Referral to family dispute resolution when exception applies

- (10) If:
- (a) a person applies for a Part VII order; and
 - (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and
 - (c) subsection (7) does not apply to the application because of subsection (9);
- the court must consider making an order that the person attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to that issue or those issues.
- (11) The validity of:
- (a) proceedings on an application for a Part VII order; or
 - (b) any order made in those proceedings;
- is not affected by a failure to comply with subsection (7) in relation to those proceedings.
- (12) In this section:
- dispute resolution provisions*** of the *Family Law Rules 2004* means:
- (a) Rule 1.05 of those Rules; and
 - (b) Part 2 of Schedule 1 to those Rules;

to the extent to which they deal with dispute resolution.

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.

62B Court's obligation to inform people to whom Part VII orders apply about family counselling, family dispute resolution and other family services

If a court makes an order in proceedings under this Part, the court must inform the parties to the proceedings about the family counselling services, family dispute resolution services and other courses, programs and services available to help the parties adjust to the consequences of that order.

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
 - (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.

65DA Parenting orders

- (1) This section applies when a court makes a parenting order.
- (2) It is the duty of the court to include in the order particulars of:
 - (a) the obligations that the order creates; and
 - (b) the consequences that may follow if a person contravenes the order.

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
 - (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
- (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.