SECTION 60CC FACTORS

From 6 May 2024, s 60CC(1)(a) provides that in determining what is in a child's best interests, the court must consider the following matters as set out in subsection (2) called "general considerations" and under s 60CC(1)(b) if the child is an Aboriginal or Torres Strait Islander child, also consider the cultural matters set out in subsection (3). Subsection (4) deals with consent orders.

General considerations

Section 60CC(2)(a) – What arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of (i) the child and (ii) each person who has care of the child (whether or not a person has parental responsibility for the child)

"Abuse", in relation to a child means an assault of the child, including a sexual assault; a person involving the child in a sexual activity in which the child is used directly or indirectly as a sexual object, where there is unequal power in the relationship between the child and that person; causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to or exposed to family violence; or serious neglect of the child: s 4(1)

A child is "exposed to family violence" if the child sees or hears family violence or otherwise experiences the effects of family violence: s 4AB(3)

Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child overhearing threats of death or personal injury by a family member towards another member of the child's family; seeing or hearing an assault of a family member by another family member; comforting or providing assistance to a family member who has been assaulted by another family member; cleaning up a site after a family member has intentionally damaged property of another family member; and being present when police or ambulance officers attend an incident involving the assault of a family member by another family member: s 4AB(4)

"Family violence" means violent, threatening or other behaviour that coerces or controls a family member or causes them to be fearful: ss 4(1) and 4AB(1)

Examples of behaviour that may constitute family violence include (but are not limited to) an assault; a sexual assault or other sexually abusive behaviour; stalking; repeated derogatory taunts; intentionally damaging or destroying property; intentionally causing death or injury to an animal; unreasonably denying the family member the financial autonomy that he or she would otherwise have had; unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; preventing the family member from making or keeping connections with his or her family, friends or culture; and unlawfully depriving a family member of his or her liberty: s 4AB(2)

Section 60CC(2A) provides that "[i]n considering the matters set out in paragraph (2)(a), the court must include consideration of:

(a) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and