



Appendix E - Legislative references: Family Law Act 1975

The following are key sections of the *Family Law Act 1975* which are relevant to, or specifically referred to, in the recommendations in this report.

Family Law Act 1975

Part VII - Children

SECTION 60B

Object of Part and principles underlying it

- (1) The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure 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 of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and

- (c) parents 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.

SECTION 61B

Meaning of parental responsibility

In this Part, parental responsibility, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

SECTION 61C

Each parent has parental responsibility (subject to court orders)

- (1) Each of the parents of a child who is not 18 has parental responsibility for the child.
- (2) Subsection (1) has effect despite any changes in the nature of the relationships of the child's parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.
- (3) Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

SECTION 61D

Parenting orders and parental responsibility

- (1) A parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.
- (2) A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any):
 - (a) expressly provided for in the order; or
 - (b) necessary to give effect to the order.

SECTION 63B

Parents encouraged to reach agreement

The parents of a child are encouraged:

- (a) to agree about matters concerning the child rather than seeking an order from a court; and
- (b) in reaching their agreement, to regard the best interests of the child as the paramount consideration.

SECTION 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).
- (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) contact between a child and another person or other persons;
 - (c) maintenance of a child;
 - (d) any other aspect of parental responsibility for a child.
- (3) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(a), the order is a *residence order*.
- (4) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(b), the order is a *contact order*.
- (5) To the extent (if at all) that a parenting order deals with the matter mentioned in paragraph (2)(c), the order is a *child maintenance order*.
- (6) To the extent (if at all) that a parenting order deals with any other aspect of parental responsibility for a child, the order is a *specific issues order*. A specific issues order may, for example, confer on a person (whether alone or jointly with another person) responsibility for the long-term care, welfare and development of the child or for the day-to-day care, welfare and development of the child.
- (7) For the purposes of this Act:
 - (a) a residence order is *made in favour* of a person, or the person, with whom the child concerned is supposed to live under the order; and
 - (b) a contact order is *made in favour* of a person, or the person, with whom the child concerned is supposed to have contact under the order; and

- (c) a specific issues order is *made in favour* of a person, or the person, on whom the order confers duties, powers, responsibilities or authority in relation to the child concerned.
- (8) For the purposes of this Act:
- (a) a person *has a residence order* in relation to a child if a residence order made in favour of the person is in force in relation to the child; and
 - (b) a person *has a contact order* in relation to a child if a contact order made in favour of the person is in force in relation to the child; and
 - (c) a person *has a specific issues order* in relation to a child if a specific issues order made in favour of the person is in force in relation to the child.
- (9) In this section:
- this Act* includes:
- (a) the standard Rules of Court; and
 - (b) the related Federal Magistrates Rules.

SECTION 68F

How a court determines what is in a child's best interests

- (1) Subject to subsection (3), in determining what is in the child's best interests, the court must consider the matters set out in subsection (2).
- (2) The court must consider:
 - (a) any wishes 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 wishes;
 - (b) the nature of the relationship of the child with each of the child's parents and with other persons;
 - (c) 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, with whom he or she has been living;
 - (d) the practical difficulty and expense of a child having contact 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;

- (e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
 - (f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the court thinks are relevant;
 - (g) the need to protect the child from physical or psychological harm caused, or that may be caused, by:
 - (i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or
 - (ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;
 - (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
 - (i) any family violence involving the child or a member of the child's family;
 - (j) any family violence order that applies to the child or a member of the child's family;
 - (k) 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;
 - (l) any other fact or circumstance that the court thinks is relevant.
- (3) 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).

- (4) In paragraph (2)(f):

Aboriginal peoples means the peoples of the Aboriginal race of Australia.

Torres Strait Islanders means the descendants of the indigenous inhabitants of the Torres Strait Islands.

Parenting compliance regime Stage 2

SECTION 70NG

Powers of court

- (1) If this Subdivision applies, the court may do any or all of the following:

- (a) make an order in respect of the person who committed the current contravention, or (subject to subsection (2)) in respect of both that person and another specified person, as follows:
 - (i) directing the person or each person to attend before the provider of a specified appropriate post-separation parenting program so that the provider can make an initial assessment as to the suitability of the person concerned to attend such a program;
 - (ii) if a person so attending before a provider is assessed by the provider to be suitable to attend such a program or a part of such a program and the provider nominates a particular appropriate program for the person to attend—directing the person to attend that program or that part of that program;
 - (b) make a further parenting order that compensates for contact forgone as a result of the current contravention;
 - (c) adjourn the proceedings to allow either or both of the parties to the primary order to apply for a further parenting order under Division 6 of Part VII that discharges, varies or suspends the primary order or revives some or all of an earlier parenting order.
- (1A) In deciding whether to adjourn the proceedings as mentioned in paragraph (1)(c), the court must have regard to the following:
- (a) whether the primary order was made by consent;
 - (b) whether either or both of the parties to the proceedings in which the primary order was made were represented in those proceedings by a legal practitioner;
 - (c) the length of the period between the making of the primary order and the occurrence of the current contravention;
 - (d) any other matters that the court thinks relevant.
- (2) The court must not make an order under paragraph (1)(a) directed to a person other than the person who committed the current contravention unless:
- (a) the person brought the proceedings before the court in relation to the current contravention or is otherwise a party to those proceedings; and
 - (b) the court is satisfied that it is appropriate to direct the order to the person because of the connection between the current contravention and the carrying out by the person of his or her parental responsibilities in relation to the child or children to whom the primary order relates.

- (3) If the court makes an order under paragraph (1)(a) that a person is to attend before the provider of a program for assessment, or is to attend a program, the court must cause the provider of the program to be notified, in accordance with the applicable Rules of Court, of the making of the order.

SECTION 70NJ

Powers of court

- (1) Subject to subsection (2), this Subdivision applies if:
- (a) an order under this Act affecting children (the *primary order*) has been made, whether before or after the commencement of this Division; and
 - (b) a court having jurisdiction under this Act is satisfied that a person has, whether before or after that commencement, committed a contravention (the *current contravention*) of the primary order; and
 - (ba) the person does not prove that he or she had a reasonable excuse for the current contravention; and
 - (c) either of the following applies:
 - (i) no court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order but the court dealing with the current contravention is satisfied that the person has behaved in a way that showed a serious disregard of his or her obligations under the primary order;
 - (ii) a court having jurisdiction under this Act has previously determined that the person has, without reasonable excuse, contravened the primary order.

Note: For the standard of proof to be applied in determining whether a contravention of the primary order has been committed, see section 140 of the *Evidence Act 1995*.

- (2) This Subdivision does not apply if the court dealing with the current contravention is satisfied that it is more appropriate for that contravention to be dealt with under Subdivision B.
- (2A) If this Subdivision applies, the court must make, in respect of the person who committed the current contravention, the order or orders available to be made under subsection (3) that it considers to be the most appropriate in the circumstances.

- (2B) This section applies whether the primary order was made, and whether the current contravention occurred, before or after the commencement of this Division.
- (3) The orders that are available to be made by the court are:
- (a) if the court is empowered under section 70NK to make a community service order—to make such an order; or
 - (b) to make an order requiring the person to enter into a bond in accordance with section 70NM; or
 - (c) if the person has contravened a parenting order—subject to subsection (5), to make an order varying the order so contravened; or
 - (d) to fine the person not more than 60 penalty units; or
 - (e) subject to subsection (6), to impose a sentence of imprisonment on the person in accordance with section 70NO.
- (4) If a court varies or discharges under section 70NM a community service order made under paragraph (3)(a), the court may give any directions as to the effect of the variation or discharge that the court considers appropriate.
- (5) When making an order under paragraph (3)(c) varying a parenting order, the court, in addition to regarding, under section 65E, the best interests of the child as the paramount consideration, must, if any of the following considerations is relevant, take that consideration into account:
- (a) the person who contravened the parenting order did so after having attended, after having refused or failed to attend, or after having been found to be unsuitable to take any further part in, a post-separation parenting program or a part of such a program;
 - (b) there was no appropriate post-separation parenting program that the person who contravened the parenting order could attend;
 - (c) because of the behaviour of the person who contravened the parenting order, it was not appropriate, in the court's opinion, for the person to attend a post-separation parenting program, or a part of such a program;
 - (d) the parenting order was a compensatory parenting order made under paragraph 70NG(1)(b) after the person had contravened a previous order under this Act affecting children.
- (6) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of a contravention of a child maintenance order made under this Act unless the court is satisfied that the contravention was intentional or fraudulent.

- (6A) The court must not make an order imposing a sentence of imprisonment on a person under this section in respect of:
- (a) a contravention of an administrative assessment of child support made under the *Child Support (Assessment) Act 1989*; or
 - (b) a breach of a child support agreement made under that Act; or
 - (c) a contravention of an order made by a court under Division 4 of Part 7 of that Act for a departure from such an assessment (including such an order that contains matters mentioned in section 141 of that Act).
- (7) An order under this section may be expressed to take effect immediately, at the end of a specified period or on the occurrence of a specified event.
- (8) When a court makes an order under this section, the court may make any other orders that the court considers necessary to ensure compliance with the order that was contravened.

