

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 1.1**

**Question No. 7**

**Senator Stott-Despoja asked the following question at the hearing on 14 February 2005:**

- a) What is the intention behind inserting the words 'and of either of the child's parents' in s60CC(3)(g)? This provision appears to direct a court to consider a parent's 'lifestyle' in determining a child's best interests.
- b) What is the intention behind the new principle in s60B(2)(e) not being limited to Aboriginal and Torres Strait Islander children, given that s60B(3) only refers to such children as does s60CC(3)(h)?
- c) What is the intention behind the framing of the introduction to s60B(1) "The objects of this part are *to ensure that the best interests of children are met by...*"? Can the Minister comment on the fact that this appears to encourage courts to see the objects provision in s60B(1) as an additional part of the decision making hierarchy in s60CC?

**The answer to the honourable senator's question is as follows:**

(a) Existing paragraph 68F(2)(f) requires the court to consider the lifestyle, culture and traditions of Aboriginal or Torres Strait people when considering a child's background in the context of considering the best interests of the child. The new paragraphs 60CC(3)(g) and (h) are based on recommendation 4 in the Family Law Council's December 2004 Report, *Recognition of Traditional Aboriginal and Torres Strait Islander Child-Rearing Practices: Response to Recommendation 22: Pathways Report, Out of the Maze* (the Council's report). The Council recommended inserting into the best interests provision, a form of words which better highlighted the importance of considering the background of a child and of either parent whether or not they were of indigenous background as relevant when making parenting orders in the best interests of the child. The inclusion of the additional words 'and of either of the child's parents' provides for broader consideration of a child's background.

The Government considers that the lifestyle, culture and traditions of both parents and the child are relevant to a consideration of a child's best interests.

(b) The Government considers it important that all children have a right to enjoy their culture. New paragraph 60B(2)(e) expands the existing principles that underlie the objects of Part VII, by including a reference to children having a right to enjoy their culture. The provision is intended to ensure that all children are able to share their culture with others in their cultural community or communities (in situations where a child might belong to more than one community).

The inclusion of this principle is consistent with the provisions relating specifically to Aboriginal and Torres Strait Islander children resulting from recommendation 3 of the Council's report. However, it is not intended to be limited only to Aboriginal and Torres Strait Islander children.

Subsection 60B(3) and paragraph 60CC(3)(h) are based on recommendations in the Council's report. These provisions seek to facilitate the application of the new principle to the specific circumstances of Aboriginal and Torres Strait Islander peoples.

(c) The words leading in to subsection 60B(1) better focus the objects and principles of the Part on the best interests of the child. This implements recommendation 17 of the Report of the House of Representatives Legal and Constitutional Affairs Committee on the Exposure Draft of the Bill which recommended that the objects set out in proposed subsection 60B(1) be amended to make more explicit reference to the need for consistency with and the paramountcy of the best interests of the child.

The objects and principles of the Part inform and guide a court's interpretation of new section 60CC as they inform and guide the court's interpretation of other provisions within the Part. The first two objects in subsection 60B(1) must be considered as primary considerations by a court in making decisions about the best interests of the child.