

# Thinking family



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# THINKING FAMILY

with Christopher Serow



## Thinking Family

When parents decide they no longer wish to live together, one or both parents may seek to relocate to another town, state or country. In some circumstances, the relocation will greatly reduce the amount of time and involvement a child or children may have with the other parent. Section 60CA of the Family Law Act 1975 ('the Act') provides that "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."

### Family Law

The Family Law (Shared Parental Responsibility) Amendment Act 2006 made significant changes to the way in which a Court determines the best interests of the child. Most notably, section 60B of the Family Law Act 1975 provides guidance to the Court in relation to the duties and obligations imposed upon parents. Among other things, those duties include "... that children have the benefit of both their parents having a meaningful involvement in their lives, to maximise the extent consistent with the best interests of the child ..."

While the Act makes no specific provision for the body of family law generally referred to as "relocation cases", in Morgan & Miles [2007] FamCA 1230 Justice Boland made an observation that the Act does require the Court to exercise a structured discretion to determine appropriate orders to be made.

### Determination of the Best Interests of the Child

When parents are unable to agree and surrender the decision making to the Court, it is incumbent on the Court to evaluate the competing proposals. In determining a child's best interests, section 60CC of the Act provides primary and additional considerations that a Court must take into account. Primary considerations include: the benefit to the child of having a meaningful relationship with both parents; and, protecting a child from physical or psychological harm.

Additional considerations include, among other things: any views expressed by a child (pending the child's maturity and level of understanding); the relationship between the child and each parent and others such as grandparents or other relatives; willingness of parents to facilitate and encourage a continuing relationship between the child and other parent; the effect on the child of any separation from either of their parents or any other child or relative with whom the child has been living; the practical difficulty and expense of a child spending time and communicating with a parent; the culture, traditions and lifestyle of the child; if the child is an Aboriginal or Torres Strait Islander child, the

right to enjoy that culture with others who share that culture; and, the attitude to the child and to responsibilities of parenthood demonstrated by the parents and the extent to which each of the parents have fulfilled or failed to fulfil their responsibilities as a parent.

The Court must also consider events and circumstances that have existed since any separation of the parents.

### Relocation Matters

In Sampson v Hartnett (No 10) [2007] FamCA 1365 (Full Court) the majority expressed the view that there is inherent power under section 114(3) (Injunctions) of the Act to prohibit parents from relocating or, alternatively, to order that a parent relocate to a specified location in order to secure the best interests of a child. Indeed, the Court can make orders for the parent that opposes the relocation to relocate themselves. This may be the case, for example, where an opposing parent has residential means, employment potential, social networks and a family history of living or spending time with the child at the town or city in which the relocating parent proposes to live with the child.

In Sampson, however, the majority concurred that the power to restrain, prohibit or order relocation is likely to be "rare" and might only be exercised "in the most exceptional cases".

In the matter of Goode & Goode [2006] FamCA 1346 the Court emphasised [para 65] the importance of the presumption of equal shared parenting. These factors were further considered in the relocation case of Taylor and Barker [2007] FamCA 1246, where provisions contained in section 60CC and 65DAA of the Act were also considered. In that case the Court determined that despite the father's application for equal parenting time, the relocation of the mother and child from Canberra to Queensland was approved giving weight to the mother's future happiness and contentment and the benefit that her future happiness and contentment would have on the child.

When an irretrievable breakdown of a marriage or de facto relationship takes place, the importance of considering proper parenting arrangements is essential. Estranged parents should carefully consider not only their own personal and lifestyle preferences, but also the guidelines contained in the Act for the best interests of the child.

Taking the time to reconsider lifestyle and parenting arrangements and, if necessary, retaining professional legal, financial and family counselling services to assist with guidance is an important step toward creating new paradigms for positive parenting arrangements and healthy family life.

Christopher K C Serow  
Principal, Solicitor Director, Notary Public,  
Migration Agent MARN 0854319