



FAMILY VIOLENCE AND THE FAMILY LAW ACT 1975 (CTH)

Family violence is not homogeneous or uniform, in its qualities. It can arise in a variety of contexts. It is widespread and can occur in all socioeconomic and ethnic groups. Unfortunately, these types of matters come before the Federal Circuit & Family Court of Australia often. There are a range of options available to ensure that the child or children in these matters are protected from exposure to family violence in all forms.

Disclaimer: **Matthews Lawyers** has prepared this Information Booklet to provide initial information to you about how family violence is dealt with by the Federal Circuit & Family Court of Australia.

The information herein is of a general nature only. It is not a substitute for legal advice and should not be relied upon. For advice specific to your circumstances, you should consult a Solicitor.

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Contents

Introduction	2
Parental Responsibility: Section 61DA Family Law Act (Cth) (hereinafter 'FLA')	3
How is violence defined in the FLA?	4
Section 60CA: Best Interests of the Child	5
Best Interests of the Child: Primary Considerations	6
Unacceptable Risk to the Child	8
Can the Child's Views be Considered? Section 60CD FLA	10
Family Consultant Reports: Section 62G FLA	10
Role of the Independent Children's Lawyer ('ICL')	10
Orders the Family Court can Make in Family Violence Cases	11
Intervention Orders and Family Court Orders	12
Domestic Violence Support Services	13
Conclusion	13

FAMILY VIOLENCE & CHILDREN'S ISSUES: FAMILY LAW ACT 1975 (CTH)

Introduction:

Family violence is not homogeneous or uniform, in its qualities. It can arise in a variety of contexts. It is widespread and can occur in all socioeconomic and ethnic groups.

The effects that the exposure to violence may have upon a child were commented upon in the matter of T & N¹ :

“There is an abundance of research from social scientists about the highly detrimental effect upon young children of exposure to violence and the serious consequences such experiences have for their personality formation. They are terrified and simultaneously come to accept it as an expected part of life; they may learn that violence is acceptable behaviour and an integral part of intimate relationships; or that violence and fear can be used to exert control over family members; they may suffer significant emotional trauma from fear, anxiety, confusion, anger, helplessness and disruption in their lives; they may have higher levels of aggression than children who do not have that exposure; and they may suffer from higher anxiety, more behaviour problems and lower self-esteem than children not exposed to violence.”

The definition of family violence in the Family Law Act 1975 (Cth) (hereinafter ‘FLA’) is expressed in gender neutral terms. In the matter of *Amador & Amador*² said:

“Where domestic violence occurs in a family it frequently occurs in circumstances where there are no witnesses other than the parties to the marriage, and possibly their children. We cannot accept that a court could never make a positive finding that such violence occurred without there being corroborative evidence from a third party or a document or an admission.

The victims of domestic violence do not have to complain to the authorities or subject themselves to medical examinations, which may provide corroborative evidence of some fact, to have their evidence of assault accepted.”

Family violence between parents is traumatic for children and can have long lasting effects. A child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence

Examples of situations that may constitute a child being exposed to family violence include (but are not limited to):

- overhearing threats of death or personal injury by a member of the child’s family towards another member of the child’s family, or

¹ [2003] FamCA 1129 per Judge Moore at paragraph 36.

² (2009) 43 FAM LR 268.

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- seeing or hearing an assault of a member of the child's family by another member of the child's family, or
- comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family, or
- cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family, or
- being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

Extensive research confirms the devastating impact family violence can have on children's lives and their physical and emotional development. Family violence can affect children in many ways.

Parental Responsibility: Section 61DA Family Law Act (Cth) (hereinafter 'FLA')

Section 61DA provides that when making a parenting order³, the Family Court must apply a presumption that it is in the best interests of the child for the parents to have **equal shared parental responsibility** for the child.

Parental responsibility in relation to children means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.⁴ Equal shared parental responsibility relates to decision making about 'major long term issues', which is defined in s 4 of the Act as follows:-

...issues about the care, welfare and development of the child of a long-term nature and includes (but is not limited to) issues of that nature about:

- a) the child's education (both current and future); and
- b) the child's religious and cultural upbringing; and
- c) the child's health; and
- d) the child's name; and
- e) changes to the child's living arrangements that make it significantly more difficult for the children to spend time with a parent.

This presumption does not provide a starting point about the amount of time or communication that a child is to have with parents. "Where two or more persons share parental responsibility, equally or in relation to any major long-term issue under a parenting order, they are required to make the decision jointly."⁵ The concept of shared parental responsibility carries with it the requirements to 'consult the other parent in

³ [Family Law Act](#) (Cth) [s 64B\(2\)](#)-(4A) defines "a parenting order" and what a parenting order may provide.

⁴ [Family Law Act 1975](#) (Cth) [s 61B](#).

⁵ [Family Law Act 1975](#) (Cth) [s 65DAC\(2\)](#).

relation to the decision to be made about that issue'⁶ and to 'make a genuine effort to come to a joint decision about that issue'.⁷ These provisions mean that consultation and some discussion between the parties is required regarding major long-term decisions, for which parental responsibility is shared."⁸

The presumption that it is in the best interests of the children that the parents have equal shared parental responsibility does not apply or is rebutted in the following circumstances:-

1. If the court reasonably believes that a parent of a child, or a person who lives with a parent of a child, has engaged in family violence⁹ or abuse of the child or another child who is a member of the parent's family;¹⁰
2. If, at an interim hearing, the court considers it is inappropriate for the presumption to apply¹¹ or;
3. Where evidence is adduced, upon which the court is satisfied 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.¹²

The Family Court will consider all the facts of the particular case before it, when making orders affecting the child, to ensure that the best interests of the child are facilitated and optimised.

How is violence defined in the FLA?

Section 4AB of the FLA states:

- (1) For the purposes of this Act, ***family violence*** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the ***family member***), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
 - a) an assault; or
 - b) a sexual assault or other sexually abusive behaviour; or
 - c) stalking; or
 - d) repeated derogatory taunts; or
 - e) intentionally damaging or destroying property; or

⁶ [Family Law Act 1975](#) (Cth) [s 65DAC\(3\)\(a\)](#).

⁷ [Family Law Act 1975](#) (Cth) [s 65DAC\(3\)\(b\)](#).

⁸ *Garrod v Davenport* [2018] FamCa 825 at paragraph 439.

⁹ [Family Law Act 1975](#) (Cth) [s 61DA\(2\)\(b\)](#).

¹⁰ [Family Law Act 1975](#) (Cth) [s 61DA\(2\)\(a\)](#).

¹¹ [Family Law Act 1975](#) (Cth) [s 61DA\(3\)](#).

¹² [Family Law Act 1975](#) (Cth) [s 61DA\(4\)](#).

- f) intentionally causing death or injury to an animal; or
 - g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
 - h) 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; or
 - i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
 - j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
- (3) For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
- (4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:
- (a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or
 - (b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or
 - (c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or
 - (d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or
 - (e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

The above behaviour mentioned in this section, is not an exhaustive list. The Federal Circuit Family Court of Australia (hereinafter 'the Family Court' for simplicity), considers the objective and subjective elements in this section. Objective elements are those that can be identified by provable facts. An example of an objective element, is bruising to the person of a Victim, alleging he or she has been assaulted. Subjective elements are those that cannot be evaluated. These elements rely upon a person's interpretation of an event. An example of subjective evidence, is where a Victim of an assault states that they are frightened of the perpetrator.

Section 60CA: Best Interests of the Child

This is the paramount consideration for the Family Court.

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Section 60B defines the objects of Part VII of the FLA as to ‘ensure that the best interests of the children are met. In the matter of *Garrod v Davenport* [2018] FamCA 825 at paragraph 325, His Honour Judge Bennett, stated that the best interests of the 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.”

The objects, thus comprise the core values of the FLA. His Honour at paragraph 327, continued saying that:

“ The principles which underlie the objects are more specific but not exhaustive. They are that, except when it is or would be contrary to the 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).”

The Family Court will make parenting orders it deems proper in a particular matter. The paramount consideration is the best interests of the child.

Best Interests of the Child: Primary Considerations

Section 60CC(2) & Section 60CC(3) of the FLA provide that the primary considerations are:

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1. The benefit to the child of having a meaningful relationship with both of his/her parents, and
2. The need to protect the child from physical or psychological harm from being subjected to, exposed to, abuse, neglect or family violence.

In making these considerations the Family Court gives greater weight to doing all things necessary to protect the child from exposure to physical or psychological harm, from abuse, neglect or family violence.

Additional considerations for the Family Court are stated in Section 60CC(3):

- (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);

- (iii) 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.

The Family Court will carefully weigh the requirements of the legislation against the best interests of the child. At all times, it will not expose a child to an unacceptable risk.

Unacceptable Risk to the Child:

The "touchstone" for unacceptable risk was enunciated in the High Court decision of *M v M* [1988] HCA 68. Here the High Court of Australia referred to the matter of *Vasser v Taylor-Black* [2007] FamCA 547. *M v M* does not import to impose a criminal standard of proof. It is not necessary for the Family Court to determine in a definitive way the

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allegation of abuse or harm to the child as a Court exercising criminal¹³ jurisdiction would be. As enunciated in *M v M* (supra):-

...The Court is concerned to make such an order for custody or access which will in the opinion of the Court best promote and protect the interests of the child. **In deciding what order it should make the Court will give very great weight to the importance of maintaining parental ties, not so much because parents have a right to custody or access, but because it is prima facie in a child's interests to maintain the filial relationship with both parents:** cf *J v Lieschke* [1987] HCA 4; (1987) 162 CLR 447, at pp 450, 458, 462, 463-464.¹⁴

Further, the High Court of Australia in the matter of *Briginshaw v Briginshaw*¹⁵ held that the Court is not required to make a positive finding that the allegation is true, it is unless satisfied according to the civil standard of proof.

A determination of unacceptable risk of abuse requires an assessment of past events to determine if there is sufficient evidence to support a finding that a risk of abuse may occur into the future. It is the formulation of orders around future risk to which the primary consideration in s 60CC(2)(b) is directed. However pursuant to section 142(2)(c) of the Evidence Act 1995 (Cth) the Family Court will also consider whether there is an unacceptable risk of future risk to determine if that risk is unacceptable or may be managed such that it will no longer be an unacceptable risk.¹⁶

Matthews Lawyers reiterates that the effects that the exposure to violence may have upon a child were commented upon in the matter of *T & N*¹⁷ :

“There is an abundance of research from social scientists about the highly detrimental effect upon young children of exposure to violence and the serious consequences such experiences have for their personality formation. They are terrified and simultaneously come to accept it as an expected part of life; they may learn that violence is acceptable behaviour and an integral part of intimate relationships; or that violence and fear can be used to exert control over family members; they may suffer significant emotional trauma from fear, anxiety, confusion, anger, helplessness and disruption in their lives; they may have higher levels of aggression than children who do not have that exposure; and they may suffer from higher anxiety, more behaviour problems and lower self-esteem than children not exposed to violence.”

¹³ *M v M* [1988] HCA 68 at 81.

¹⁴ *M v M* [1988] HCA 68 at 81.

¹⁵ (1938) CLR 336 at 362, *Garrod v Davenport* [2018] FamCA 825 at paragraph 335.

¹⁶ *Garrod v Davenport* [2018] FamCA 825 at paragraph 338.

¹⁷ [2003] FamCA 1129 per Judge Moore at paragraph 36.

Can the Child's Views be Considered? Section 60CD FLA

Section 60CC(3)(a) requires the Federal Circuit Family Court of Australia (hereinafter 'the Family Court') to consider any views expressed by the child in the proceedings. The Family Court informs itself of the views of the child pursuant to Section CD(2) by:

1. Having regard to anything contained in a report ordered by the Family Court, from a Family Consultant, pursuant to section 62G(2) of the FLA; or
2. By making an order pursuant to Section 68L of the FLA, for the best interests of the child by having the child independently represented by a Solicitor – Independent Children's Lawyer - or
3. By any other means that the Family Court thinks is necessary and appropriate to ensure that the best interests of the child occurs.

Family Consultant Reports: Section 62G FLA

The Family Court may direct a family consultant to give it a report on such matters relevant to the proceedings if there is reason to believe that it is necessary. The Family Consultant must ascertain the views of the child regarding a specific issue and include the child's views in the report. Where necessary the Family Consultant will also recommend that the parents participate in family dispute resolution and or family counselling, or any other courses or programs. At all times, the focus of the Family Court is to facilitate and optimize the best interests of the child and protect the child from exposure to family violence, in any form. If the Family Court thinks there is a real risk of future harm to the child, whether physical, emotional or psychological, from family violence, it will make orders that minimizes that risk, such as only permitting the other parent to have supervised time with the child, or terminate or suspend the time the child spends with the abusive parent. The orders the Family court will make, where family violence is a factor, are tailored to each case to meet the specific needs of that case.

Role of the Independent Children's Lawyer ('ICL'):

This is set out in section 68LA of the FLA. He or she must:

- act impartially in dealings with the parties to the proceedings; and
- ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and
- if a report or other document that relates to the child is to be used in the proceedings:
 - (i) analyse the report or other document to identify those matters in the report or other document that he or she considers to be the most significant ones for determining what is in the best interests of the child; and
 - (ii) ensure that those matters are properly drawn to the court's attention; and
- endeavour to minimise the trauma to the child associated with the proceedings; and

- facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child.

The ICL is not the child's legal representative. The ICL assists the Family Court to understand the views of the child. The ICL forms an independent view based upon evidence that comes to his or her hand, regarding the best interests of the child. He or she is not obliged to carry out the child's instructions.

Once the views of the child are ascertained, the court is required to consider them in concert with the primary considerations and such of the other additional considerations relevant to the child's welfare. *This process of ascertaining the wishes of the child, is described by the Full Court in R v R¹⁸ as follows:-*

“ ... the court will attach varying degrees of weight to a child's stated wishes depending upon, amongst other factors, the strength and duration of their wishes, their basis, and the maturity of the child, including the degree of appreciation by the child of the factors involved in the issue before the court and their longer term implications. Ultimately the overall welfare of the child is the determinant. That is so because the legislation says so and also because long before specific legislation the practice of the Court in its *parens patriae* jurisdiction established that view.”

The court also stated in R v R¹⁹

that “ ... [t]here are many factors that may go to the weight that should be given to the wishes of children and these will vary from case to case and it is undesirable and indeed impossible to catalogue or confine them in the manner suggested. Ultimately it is a process of intuitive synthesis on the part of the trial judge weighing up all the evidence relevant to the wishes of the children and applying it in a commonsense way as one of the factors in the overall assessment of the children's best interests.

The court may inform itself of views expressed by children by having regard to anything contained in a report given to the Court by a family consultant²⁰ or other expert or appropriately qualified person retained by the parties or through the independent children's lawyer.²¹

Orders the Family Court can Make in Family Violence Cases:

Where there is an unacceptable risk will be determined to be unacceptable, the Family Court will if it is in the best interests of the child make orders that there is no contact

¹⁸ [2000] FamCA 43 at paragraph 42.

¹⁹ [2000] FamCA 43 at paragraph 54.

²⁰ [Family Law Act 1975](#) (Cth) [ss 60CD\(2\)\(a\)](#), [62G\(2\)](#) and [62G\(3A\)](#), the last provision of which generally requires the person giving the report to ascertain the child's views and include them in the report

²¹ [Family Law Act 1975](#) (Cth) [ss 60CD\(2\)\(b\)](#), [62G\(2\)](#) and [68LA\(5\)\(b\)](#), the last provision of which requires an independent children's lawyer to ensure that the child's views are put before the court.

between the child, directly or indirectly, with the parent who presents that risk. In other cases, the Family Court may consider a range of strategies, to protect the child and family, in the context of the possible benefits to the child in maintaining some form of relationship with the parent concerned. Specifically, the Family Court, may consider the following in determining the best outcome is for the child, such as:

1. Should time spent between the child and the parent be supervised, and if so, by whom and under what conditions, particularly:
 - 1.1 who the supervisor should be,
 - 1.2 should it be a professional supervisor?,
 - 1.3 how long and frequent the visits should be?,
 - 1.4 the appropriateness and limits of using a children's contact centre,
 - 1.5 should others, such as siblings or relatives, attend the supervised visits,
 - 1.6 how should changeover occur?,
 - 1.7 who should pay the cost of the supervisor?,
 - 1.8 whether telephone contact with the child is permitted and under what conditions, including the time of such contact, the duration of such contact and the number of times per week?, and
 - 1.9 whether contact via other electronic means, such as email, SMS and webcam, is permitted?
2. The form and limits of communication between the parent and child.
3. Should the parent concerned undergo treatment or attend a course of counselling or education as a precondition of spending any time with the child?
4. If the Court makes a final order, should the parties be referred to an external Parenting Orders Program for supervision and support?
5. Should the Court make orders that allow the ongoing wellbeing of the child to be monitored in circumstances where strategies to protect the child are deemed necessary when orders support some sort of relationship between the child and the perpetrator of the family violence?
6. If the Court makes an order precluding contact between a child and one parent, should contact between the child and extended family members be considered?

Intervention Orders and Family Court Orders:

Often one of the parties has sought assistance from South Australia Police, when family violence has occurred. Police will issue an Interim Intervention Order against the perpetrator of the family violence. The Victim will be the Protected Person on it. Where necessary the child or children of the relationship will be included for their protection. The Perpetrator will be the Defendant and may also have charges of aggravated assault against him or her. The Perpetrator of the domestic violence will be prohibited from contacting directly or indirectly, the Protected Person(s). There may also be distance clauses stated in the Interim Intervention Order, precluding the Defendant from coming within a certain distance of the Protected Person(s), or attending at their place of work or other places or even from attending at the child/ren's school. The Defendant must comply

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with all of the terms of the Interim Intervention Order. The Interim Intervention Order may be made final – permanent – either be the Defendant agreeing to it or after a Trial.

Intervention Orders are heard in the Magistrates Court of South Australia. If there is an order of the Family Court, that order takes precedence over any order made in the Magistrates Court of South Australia, where there is an inconsistency, as the Family court is a federal court.

There are serious penalties for breaching an Intervention Order. Imprisonment is open to the Magistrates Court for breaching an Intervention Order. Likewise, breaching an Order of the Family Court, also has serious consequences. Imprisonment is also an option available to the Family Court. If you are the Victim of family violence, report every breach of any Order to the authorities. You cannot receive help, if the authorities do not know what is happening. Also seek help from your Doctor, Community Health Centre, friend or one of the telephone help services available. Lifeline, Beyond Blue, 1800 RESPECT are just some of the organisations you can go to for help. You can find out contact details for domestic violence services by doing a google search.

If you have been served with an Intervention Order, you should seek immediate legal advice.

Domestic Violence Support Services:

Some of the services available:

South Australia Police Emergency 000

Lifeline Ph: 13 11 14,

Domestic Violence MensLine - 1300 78 99 78

Beyond Blue 1300 22 46 36

1800 RESPECT

Legal Services Commission 1300 366 424 or <https://lsc.sa.gov.au/>

Women's Domestic Violence Court Assistance Service of the Legal Services Commission

1800 246 642 <https://wdvcas.lsc.sa.gov.au/> Men's Legal Service 1800

463 675 or <https://menslegalservice.org.au/>

<https://www.servicesaustralia.gov.au/family-and-domestic-violence>

Conclusion:

The Family Court takes its role seriously when it comes to facilitating and optimizing the best interests of the child, which is the paramount consideration of the FLA. A number of factors will be considered to ensure that the child's safety and security are promoted.

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The following factors are likely to be central to the determination of whether the Court should order that a child does or does not spend time with a parent against a specific finding has been made of family violence or abuse (or whom the Court considers poses a risk to the child of future exposure to family violence or abuse):

1. The effect of the family violence or abuse on the child.
2. The effect of the family violence or abuse on the parent with whom the child is living.
3. The degree of insight or motivation of the parent against whom a finding of family violence or abuse has been made. In particular, is that parent motivated by the child's best interest or a desire to either intimidate or control the other parent?
4. Where a parent who has been found to have exposed a child to family violence and wishes an order to be made to spend time with that child:
 - 4.1 the degree of acknowledgement by that parent that family violence has occurred,
 - 4.2 whether that parent has accepted some or all of the responsibility for the violence
 - 4.3 the extent to which that parent accepts that family violence was inappropriate and the degree of insight exhibited of the likely ill-effects on the child of such behaviour
 - 4.4 has the parent concerned expressed regret or remorse for his or her behaviour?
 - 4.5 does the parent concerned recognise that he or she has been an inappropriate role model for the child concerned?
 - 4.6 has the parent concerned participated, or are they willing to participate, in any program or course of treatment designed to prevent a recurrence of family violence by him or her in future?
 - 4.7 does the parent concerned have the capacity to sustain an ongoing arrangement to spend time with the child and is he or she genuinely interested in the child's welfare?
 - 4.8 does the parent have any understanding of the impact of his or her behaviour on the other parent concerned, both in the past and currently?
 - 4.9 the capacity of the parent found to have been the perpetrator of family violence to provide adequate care for the child, and
 - 4.10 the nature of the relationship between the child and the parent found to have been the perpetrator of family violence.

5. In cases where the Court is considering that the child have limited or no time with the parent concerned:
 - 5.1 what will be the effects on the child of a deprivation of relationship with that parent?
 - 5.2 what will be the consequences for the child of losing the opportunity to know that parent at first hand?
 - 5.3 what will be the consequences for the child of losing the opportunity to know grandparents and other relatives on that parent's side of the family?
 - 5.4 what will be the consequences for the child of losing the opportunity to interact with a parent who loves him or her and is able to provide some benefits for the child concerned?
 - 5.5 what will be the consequences for the child and parent concerned of being deprived of the opportunity to repair their relationship and undo the harm done as a result of the parent's violent behaviour?
 - 5.6 will such an outcome diminish the prospect of the parent and child reconnecting when the child is older and more able to make a mature and personal decision about whether he or she wishes to have a relationship with that parent in future?
6. What are the views of any child concerned in respect of spending time with a parent who has been found to be violent and what weight should be given to those views?

Matthews Lawyers are experienced practitioners in the Federal Circuit & Family Court of Australia. If you need help with your family law matter, contact one of our experienced Solicitors, who will guide you through the process – **0401 269 091**.