



Reconsideration of final parenting orders

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One of the notable [changes to the Family Law Act 1975](#) (Cth) ("the Act"), which came into effect in May 2024, was the insertion of a new section, s 65DAAA, which deals with the reconsideration of final parenting orders.

Historically, in order to vary or set aside final parenting orders, the traditional approach adopted by the Courts was set out in [Rice v Asplund](#) (1979). This case provided that the applicant **must** establish a significant change in circumstances for the original orders to be varied (known as the 'threshold test').

May 2024 family law changes - impact on parenting orders

Since the family law reforms came into effect on 6 May 2024, the new section specifically deals with the reconsideration of final parenting Orders, something which previously has only been dealt with by case law.

New section 65DAAA provides that the Court **must not** reconsider a parenting order **unless**:

1. the Court has **considered** whether there has been a significant change of circumstances since the final parenting order was made; **and**
2. the Court is **satisfied** that, in all the circumstances (and taking into account whether there has been a significant change of circumstances since the final parenting order was made), it is in the best interests of the child for the final parenting order to be reconsidered.

The new legislation adds a second limb to the previous test in *Rice v Asplund* in that the Court must be satisfied that it is in the child's best interest for the final parenting order to be reconsidered.

Consideration of the best interests of the child

In [considering the best interests of the children](#) and without limiting the consideration of the best interest factors under section 60CC of the Act, the Court can have regard to any matter it considers relevant, which includes:

1. why the final parenting order was made and the evidence available to the Court at the time it was made;
2. any new evidence available that was not available at the time the final parenting order was made;
3. whether, if the final parenting order is reconsidered, the Court would make an order in significantly different terms; and
4. the potential benefit or detriment to the child of the final parenting order being reconsidered.

If the Court finds it is **not** in the best interests of the children to vary the final parenting order, the orders will not be varied, even if a significant change in circumstances is established to the Court.

Additionally, and importantly, the Court only needs to **consider** whether a significant change in circumstances has occurred. This is clearly a deviation from the rule in *Rice and Asplund* that mandated a finding of significant change in circumstances.

Cases considering the new law regarding variation of final parenting orders

There have been two important cases in 2024 which consider the new legislation, namely [Whitehill & Talaska](#)[2024], and [Rasheem & Rasheem](#)[2024].

In both cases, the Court has dismissed the application for the Court to reconsider the final orders. They have both noted that the new threshold test, as set out in the new legislation, operates in a different way. Given the legislative changes and depending on the facts of a case, it may be more difficult to vary final orders.

What occurs if we successfully meet the new threshold test?

If the Court considers there was a change of circumstances and the Court is satisfied that, in all the circumstances, it is in the best interests of the child for the final parenting order to be reconsidered, the Court may consider varying the orders.

What occurs if we fail to meet the new threshold test?

If the Court finds that it is **not** in the best interests of the children to reconsider the final parenting orders regardless of whether the applicant party can establish a significant change in circumstance, then an application will be dismissed.

Get help from a family lawyer

Varying or setting aside final parenting orders is complex and requires consideration of what is in the best interests of the children.

Whilst the Court is still required to consider whether there has been a significant change of circumstances since the final parenting order was made, the insertion of s 65DAAA mandates the Court to be satisfied that, in all the circumstances, it is in the best interests of the child for the final parenting order to be reconsidered. In doing so, the Court will be carefully considering the potential benefit or detriment to the children of further litigation.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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