Guide to family law reforms effective from May 2024

Date: Sunday June 9, 2024

E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111

The Family Law Amendment Act 2023 and Family Law Amendment (Information Sharing) Act 2023 were passed by the Australian Parliament on 19 October 2023.

These family law reforms see significant changes to the parenting framework of the *Family Law Act*, including:

1. changes to the best interests of the child;
2. changes to parental responsibility provisions;
3. removal of mandatory consideration of certain time arrangements; and
4. changing final parenting orders.

The majority of the amendments to the *Family Law Act 1975* ("the Act") came into effect on 6 May 2024. The changes will apply to new and existing matters. This means that if you have a family law matter already before the Court and the final hearing had not commenced prior to 6 May 2024, the new laws will apply.

Key amendments to the parenting framework in family law matters

Changes to the best interest of the child

Section 60CA of the Act provides that when making a parenting order, a court must have regard to the best interests of the child as the paramount consideration.

Prior to the amendments, the Court used to have sixteen factors to consider when assessing a child's best interest. This section has now been repealed and replaced with a far shorter list of considerations. Under the new section, the Court will consider six core factors when determining the best interests of your child/ren.

The new factors the Court will consider to determine the best interests of the child are:

1. what arrangements would promote the safety (including safety from family violence, abuse, neglect, or other harm) of the child; and each person who has care of the child (whether or not a person has parental responsibility for the child);
2. any views expressed by the child;
3. the developmental, psychological, emotional and cultural needs of the child;
4. the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
5. the benefit to the child of being able to have a relationship with the child's parents and other people who are significant to the child, where it is safe to do so, and
6. anything else that is relevant to the particular circumstances of the child.

The amendments have also introduced a standalone best interest factor if the child is Aboriginal or Torres Strait Islander. If this is the case, the Act provides that the court must consider the following matters:

1. the child's right to enjoy the child's Aboriginal or Torres Strait Islander culture by having the support, opportunity and encouragement necessary:
2. to connect with, and maintain their connection with, members of their family and with their community, culture, country and language; and
3. to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
4. to develop a positive appreciation of that culture; and
5. the likely impact any proposed parenting order under this Part will have on that right.

Parental responsibility provisions

The Act still maintains its current position that each parent has parental responsibility for a child who is under the age of 18 (subject to court orders).

However, the amendments have repealed the presumption of 'equal shared parental responsibility', which meant parents had an **equal** say in determining major long-term decisions

(such as education, religious and cultural upbringing, health, name and significant changes to living arrangements).

Notably, the Act now adopts the terminology of *‘joint decision making on major long-term issues’*.

The Act provides that unless there are Court orders stating otherwise, and if it is safe to do so, parents are encouraged to consult each other about major long-term issues in relation to the child, having regard to the best interests of the child as the paramount consideration.

The new provisions in the Act make it clear that the Court can make orders that decisions are made jointly or that one parent has sole decision-making in relation to all or specified major long-term issues.

If a parenting order provides for joint decision-making in relation to all or specified major long-term issues, then, except to the extent the order otherwise specifies, the order is taken to require each of the persons:

1. to consult each other person in relation to each such decision; and
2. to make a genuine effort to come to a joint decision.

The Act expressly notes that it does not require any other person to establish or verify whether the decision was reached jointly before being acted upon. This means, for example, that third parties, such as schools or healthcare providers, are not obliged to verify the decisions and can assume they were determined jointly.

Additionally, parties no longer have an obligation to consult each other on issues that are **not** major long-term issues, such as decisions about the child's dietary choices or clothing.

Removal of mandatory consideration of certain time arrangements

Prior to the amendments, the Court had to consider making an order that a child spend equal time or substantial and significant time with each parent if an order for equal shared parental responsibility was made.

The Court is now simply required to consider the best interests of the child considerations when determining time spent with each parent. The Court can consider if equal time or significant and substantial time is in the child’s best interest (factors outlined above).

Changing final parenting orders

There has been a new section inserted into the Act (s 65DAAA) regarding the reconsideration of final parenting orders by the Court.

If there are final parenting orders in place, the Act makes it clear that the Court must not reconsider the final 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 it is in the best interests of the child for the final parenting order to be reconsidered.

The amendments to the Act on 6 May 2024 sought to codify the principles arising from the 1979 case of *Rice &Asplund (1979) FLC 90-725*. However, the introduction of section 65DAAA has changed the threshold issues required to be met. The new legislation added a second limb to the previous test in *Rice &Asplund* in that the Court must also be satisfied that it is in the child's best interests for the final parenting order to be reconsidered.

Get help from a family lawyer

We understand that these changes may cause some confusion and/or uncertainty for anyone looking to make parenting arrangements after separation or involved in a parenting dispute.

If you're working through parenting arrangements and you need assistance to ensure the best interests of the children are being protected, our family lawyers have significant expertise and experience in all aspects of parenting disputes.

Contacting E&A Lawyers

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

02 9997 2111

info@ealawyers.com.au
