



Reconsideration of final parenting orders – clarification of the approach

Date: Sunday June 8, 2025

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In November 2024, we published an article, "[Reconsideration of final parenting orders](#)", discussing the notable [changes to the Family Law Act 1975 \(Cth\)](#) ("the Act") that came into effect in May 2024. These changes introduced a new section 65DAAA, which deals with the reconsideration of final parenting orders.

The wording of section 65DAAA differed from the well-established rule of [Rice v Asplund](#), which has led to uncertainty about what the Federal Circuit and Family Court of Australia ("the Court") is obliged to take into account when reconsidering final parenting orders. The Full Court decision in [Radecki & Radecki \[2024\] FedCFamC1A 246](#) in December 2024 has clarified the interpretation of section 65DAAA.

The addition of section 65DAAA to the *Family Law Act*

Section 65DAAA(1) provides that if a final parenting order is in force in relation to a child, the court must **not reconsider** the final parenting order unless the following matters are satisfied:

1. The Court has considered whether there has been a significant change in circumstances since the final parenting order was made; and
2. 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 orders to be reconsidered.

Additionally, section 65DAAA(2) provides guidance and a non-exhaustive list of matters that the Court may consider in determining whether or not it is in the best interests of the child for the final parenting orders to be reconsidered.

Section 65DAAA was introduced in the May 2024 amendments to the Act with the intention of codifying *Rice v Asplund*. However, the wording of 'consider' in the legislation lead to confusion and appeared to be a clear deviation from the well-established rule in *Rice v Asplund* that mandated a **finding** (not just a consideration) of a significant change in circumstances since the final order was made.

Decisions in 2024 interpreted s65DAAA differently

Several decisions from mid to late 2024 considered the interpretation of section 65DAAA of the Act. In our previous article, we explored two cases that discussed the new legislation, namely *Whitehill & Talaska* [2024] and *Rasheem & Rasheem* [2024].

In both cases, the Court dismissed the application for the Court to reconsider the final orders. Both decisions noted that the new threshold test, as set out in the new legislation, operates in a different way.

In *Whitehill & Talaska*, the court interpreted section 65DAAA as not requiring a change of circumstances rather a *consideration* of whether or not there is a change of circumstances. The Court reiterated that all the circumstances must be taken into account including section 60CC best interest factors.

However, a literal interpretation of the wording of section 65DAAA, as adopted in [Rasheem & Rasheem](#) and [Whitehill & Talaska](#), is at odds with and conflicts with the context and purpose of the statute. The [Explanatory Memorandum to the Family Law Amendment Bill 2023](#) clearly states that the new section 65DAAA was intended to codify the rule established in *Rice v Asplund*.

Clarity on interpretation of s 65DAAA when reconsidering final parenting orders

The Full Court in *Radecki & Radecki* (in December 2024) has provided clarity in relation to the interpretation of new section 65DAAA of the *Family Law Act 1975* (Cth).

The Full Court clarified that section 65DAAA requires not just the court to 'consider' whether there has been a significant change of circumstances before altering final parenting orders, but the Court must find there has been an actual change of circumstances.

In essence, the Full Court has determined that s 65DAAA should be interpreted in the same way as the rule established under *Rice v Asplund*, which has been used as the benchmark for determining whether or not final parenting orders can be reconsidered.

Austin and Williams JJ concluded at [79]:

“We therefore conclude, for the purposes of s 65DAAA(1) of the Act, and having regard to the principles espoused in Rice and Asplund and subsequent authority, the proper interpretation of “consider” should not be a literal one. The word “consider” in s 65DAAA should be construed to mean the Court is required to contemplate the evidence and to make findings of fact as to what changes in circumstances (if any) there have been since the making of the anterior parenting orders. If there is no positive finding of changed circumstances, that is the end of the matter. If there is a positive finding as to changed circumstances, the second stage of the process requires the Court to make its determination, subject to the overarching best interests principle, as prescribed by s 65DAAA(1)(b) and otherwise having regard to relevant s 60CC considerations and the matters referred to in s 65DAAA(2).”

Radecki & Radedki is a significant case as it has clarified that section 65DAAA of the *Family Law Act 1975 (Cth)* is to be interpreted and applied as a codification of the rule in *Rice v Asplund*, which was the original intention as set out in the Explanatory Memorandum to the [Family Law Amendment Bill 2023](#).

Therefore, the Court must **find** that there is a change in circumstances (not just consider whether there has been a change) since the making of earlier parenting orders and that any changes will be in the best interests of the child/ren, before those orders can be reconsidered.

Get help from a family lawyer

Whilst the Court must first determine that there has been a significant change of circumstances since the final parenting order was made, ultimately, any change to orders must be in the best interests of the child.

If there has been a significant change in circumstances and you want to consider changing your final parenting orders, get in touch with one of our experienced family lawyers who can advise you on your specific circumstances.

Contacting E&A Lawyers

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

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

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