



Major changes to the Family Law Act from October 2023

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On 19 October 2023, amendments to the Family Law Act 1975 (“the Act”) passed through the Federal Parliament with ease. The Federal Government believes that these changes will ensure that the family law system is “accessible, safer, simpler to use, and delivers justice and fairness”. This blog looks at changes related to:

parental responsibility;

prioritising the safety of children and families; and

other key changes with an emphasis on the best interests of the child.

The Bills were assented to by the Governor General on 6 November 2023 and most of the changes will come into effect from 6 May 2024.

Family Law Amendment Bill 2023 - best interests of the child are paramount

The first Bill amends the Act aiming to ensure that the [best interests of children](#) are at the centre of all parenting decisions, whether they are made inside or outside of the courtroom. This new legislation will hopefully also make the family law system easier for

litigants to navigate and understand.

The first key change is the removal of the presumption of equal shared parental responsibility. The Act defines “parental responsibility” as:

‘in *relation* to a child, all the duties, power, responsibilities and authority which, by law, parents have in relation to children.’

You can read more about this in our blog, [“What does parental responsibility mean?”](#).

How did parental responsibility get applied before the 2023 changes?

Prior to the changes coming into effect from May 2024, the Act (s61DA) provides that parents have equal shared parental responsibility (ESPR) for their children unless it can be rebutted on reasonable grounds that a parent has engaged in abuse of a child or [family violence](#).

This presumption was often conflated with section 65DAA as giving parents a right to equal time with their children. While the Court must consider making an order for equal time if it orders ESPR, it must also consider whether it is reasonably practicable to do so.

The confusion between ESPR and equal time has often resulted in parents entering unnecessary negotiations or litigation based on mistaken assumptions about their entitlements. Notwithstanding, many family law experts also believe that this provision (as it stood prior to the changes) put certain children at risk because of the improper way the provisions were applied.

Effect of the changes to parental responsibility and best interests of the child

It seems like the new approach will be more flexible and may provide for joint decision-making or sole decision-making, or a combination of the two when looking at major long-term issues (e.g., education or health).

If the Court makes an order for shared decision-making about an issue, the parties will be required to consult each other and to make a genuine effort to come to a joint decision. Importantly, the legislative changes make it clear that any other person or entity (e.g., schools or medical practitioners) is not required to establish that there has been a joint decision between the parents before acting on a decision communicated by a person with decision-making responsibility.

Under the new laws, parenting decisions will have to be based solely on what is in the best interests of the child, as determined by the new section 60CC provisions.

These provisions now include six general considerations and a further two considerations if a child is Aboriginal or Torres Strait Islander. This structure is non-hierarchical, unlike before, and focuses on a core list of considerations that promote a child’s welfare and development.

The six general considerations in determining best interests of the child

Promoting the safety (including safety from family violence, abuse, neglect, or other harm) of the child and each person who has care of the child;

Any [views expressed by the child](#);

The developmental, psychological, emotional, and cultural needs of the child;

The capacity of each proposed carer to provide for the child's developmental, psychological and emotional needs, having regard to the carer's ability and willingness to seek support to assist them with caring;

The benefit to the child of being able to have a relationship with both parents and [other significant people](#), where it is safe to do so; and

Anything else that is relevant to the child.

If the child is Aboriginal or Torres Strait Islander, the Court will also consider the child's right to enjoy their culture by having the opportunity to connect with and maintain their connection with their family, community, culture, country and language, and the likely impact any proposed parenting order will have of that right.

Family Law Amendment (Information Sharing) Bill 2023 – family violence protections

The second raft of changes is hoped to ensure Courts have access to the full picture of family safety risk in order to prioritise the safety of children and families.

This amendment establishes the following:

Two new information-sharing orders that allow Courts to directly and quickly seek information from the relevant agencies (e.g., Police or Child Protection) about family violence, child abuse and neglect that could place children at risk;

The Courts will now be able to make these Orders at any point during proceedings so that information is accurate and up-to-

date; and

That any sensitive information is only disclosed in a safe and appropriate manner.

Other important amendments to the Family Law Act

Parents who are spending time with a [child under a parenting order](#) are no longer required to consult with each other regarding decisions that are not about major long-term issues.

Requiring an [Independent Children's Lawyer](#) to meet directly with children.

Powers to enable the Government to regulate family report writers.

A definition of 'member of the family' in the Family Law Act that is inclusive of Aboriginal and Torres Strait Islander concepts of family and kinship.

Further changes to the Family Law Act in the pipeline

These two initial Bills are only the first raft of proposed changes to the Family Law Act. The Family Law Amendment Bill (No. 2) 2023 is currently before Parliament.

This Bill proposes amendments in relation to property settlement, case management procedures in the Court system, children's contact services and other provisions. Again, we will provide an update once this further Bill passes Parliament.

How a family lawyer can help

In theory, these changes should not make a significant difference in outcomes of court-determined parenting matters. The concept of best interests of the child has always been considered the primary factor in determining parenting orders.

Having said this, there is likely to be an increase in litigation with these amendments as was seen when the *Family Law Act* was amended in the past. Parents may seek clarity about how the amendments will impact on their family circumstances or even seek to have their [parenting orders varied](#).

Before making any decisions about revisiting your family law matter, whether through mediation or litigation, you should consider speaking to our specialised and highly experienced team. We can help you make an informed decision about your entitlements, the best interests of your child according to the Act, and what appropriate steps you should take.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.