

Removal of the presumption of equal shared parental responsibility

Provided for in section 61DA of the FLA, the new amendment removes the existing presumption that it is in the best interest of the child for parents to make joint decisions regarding the child's long term commitments. By removing this presumption, the Amendment Act enables that parental responsibility will be based solemnly on the best interest of the child, in each individual circumstance and matter.

Enforcement of Orders

The changes are to amend and enhance the consequences for non-compliance to ensure consistent application within the Court when areas of conflict arise. This includes

- Removal of specific cost order provisions
- Removal of Community service orders for non-compliance
- That the court may
 - Order time spent with the child
 - Carry the order
 - Enforce parenting programs etc.



Parenting framework: Best Interest of the Child

Currently section 60B of the Family Law Act 1975 (FLA) lists a range of objects the Court is to consider in custody matters when determining the best interests of the child. The Amendment has now simplified this section to **two main factors**;

- Ensuring the best interest of the children are met, including but not limited to ensuring their safety and;
- Giving effect to the provisions in the Convention on the Rights of the Child.

Additionally, the amendment will extend to include a new range of factors located in section 60CC(2) promoted by the Australian Law Reform Commission in their 2019 report on the Family Law system.

The 'best interest of the child' must now consider the **following factors**;

- To protect the safety of the child from
 - Family violence
 - Abuse
 - Neglect
 - All forms of harm to the child
 - Personal views expressed by the child
 - The emotional, developmental, psychological and cultural needs
 - The capacity of the individual to have parental responsibility of the child to met the aforementioned needs.
 - The benefit of the child having a relationship with their parents and other significant members in the child's life.
- Any circumstances relevant to the best interest of the child.



Family Law Amendment Act 2023

what you need to know

The **Family Law Amendment Act 2023** (Cth) ('Amendment Act') proposes to change the way in which we have previously viewed Family Law frameworks. Effective as of May 2024, the changes will apply to both new and existing matters, except in the circumstances where a final hearing has commenced. This article provides an insight into the main schedule amendments; how they will apply and impact you within a Family Law proceeding.



Definition of 'Member of the family' and or 'Relatives'

A welcomed change is the expansion of the terminology to include a verity of members of the family, that have previously not been considered. Widening the interpretation now enables step parents, the scope of domestic violence and cultural considerations such as kinships to now be considered and valued in the circumstances of the child's best interest.

Children providing an expressed view

The amendment creates a new requirement that children are to meet with an Independent Children's Lawyer (ICL) to reflect the child's best interest. The ICL will act to articulate the views of the child to ensure they are fully represented and considered before the Court.

Contact Us



(03) 9098 8749



info@melmarklaw.com.au



www.melmarklaw.com



Implementation

The **Family Law Amendment 2023** is a welcomed change to Family Law frameworks that are yet to reach the final stages of proceeding. The above changes provide an insight into how these changes will affect you as a client directly and facilitate a timely, safe and even handed result in the best interest of the child. It is essential to understand how these amendments may impede on your situation, and to seek legal advice if necessary.

Navigating the Family Law system can be daunting, however by understanding these amendments; parents and guardians can make an informed decision which reflects the best interest of the child.