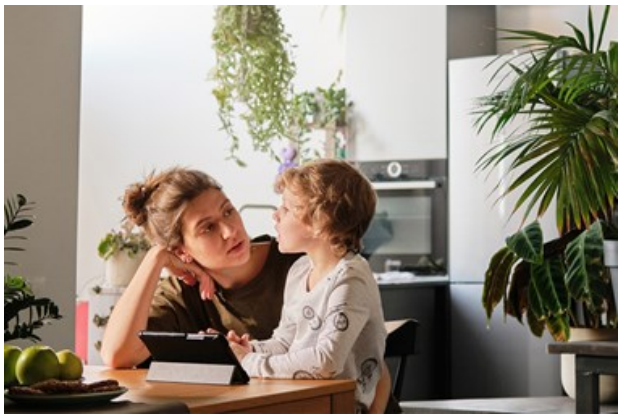

Major changes to the Family Law Act from May 2024

Date: Monday November 27, 2023

A topic of discussion among family lawyers throughout 2023 has been the proposed reforms to the current family law regime, in particular Part VII of the *Family Law Act* (“FLA”), which sets out the framework for parenting orders. This article explores the key changes to the FLA, including “best interests of the child” considerations, removal of the presumption of “equal shared parental responsibility”, seeking changes to Final Parenting Orders, communication during family law proceedings and the requirement, where an Independent Children’s Lawyer is appointed, for that lawyer to meet with the child.

The *Family Law Amendment Act* received royal assent on 6 November 2023, and most of the amendments will come into effect on 6 May 2024.

What are the key changes in family law commencing May 2024?

The main purpose of the reform is to ensure that the best interests of the child remain the central focus of parenting proceedings as well as making the application of the law easier to navigate.

The key changes are:

1. Simplifying how the Court decides what care arrangements are in the child’s best interests;
2. Removing the presumption that parents have equal shared parental responsibility;
3. Making it clear that final parenting orders can only be changed if there has been a “significant change in circumstances”;
4. Clarifying what kinds of communication are allowed during family law proceedings; and
5. Clarifying the role of Independent Children’s Lawyers.

We will discuss each change in more detail below.

Simplifying the “best interests of the child” considerations

Currently, the Court must consider a lengthy list of 15 factors when deciding what care arrangements are in the child’s best interests.

The incoming legislation, taking effect from May 2024, sets out a shorter list of 6 considerations as follows:

1. What arrangements would promote the safety (including safety from being subjected to, or exposed to, 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. 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 (for example, grandparents), where it is safe to do so; and
6. Anything else that is relevant to the particular circumstances of the child.

With the new changes, the Court must also consider:

1. Any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child);
2. Any family violence order that applies or has applied to the child or a member of the child’s family; and
3. If the child is an Aboriginal or Torres Strait Islander child:

1. The child’s right to enjoy the child’s Aboriginal or Torres Strait Islander culture by having the support, opportunity and encouragement necessary:

1. to connect with and maintain their connection with members of their family and with their community, culture, country and language;
2. to explore the full extent of that culture, consistent with the child’s age and developmental level and the child’s views;
3. to develop a positive appreciation of that culture;

1. The likely impact any proposed parenting order will have on that right.

It’s important to note that the Court can consider these matters, even where a consent order is being sought.

Get advice regarding your parenting orders: 03 9006 8907The starting point will no longer be ‘equal shared parental responsibility’

Prior to the changes coming into effect in May 2024, there was a presumption of “shared parental responsibility” (part of legislative changes that came into effect in 2006). This is not a presumption of equal shared care, however, distinguishing between “shared parental responsibility” and “equal shared care” has created a lot of confusion.

Under the new legislation, the presumption of equal shared responsibility will no longer apply. Instead, unless it is unsafe to do so, parents are *encouraged* to consult each other about issues involving the child’s long-term care, welfare and development with the child’s best interests as the paramount consideration.

Note: equal shared responsibility may still be “a consideration” but there is no longer a “presumption” for this outcome.

The court can still make orders on how decision-making responsibility is allocated. For example, a parent can have sole decision-making responsibility for the child’s health-related issues while sharing that responsibility with the other parent for other aspects like education. Joint decision-making means that not only are the parents required to consult each other, but also make *a genuine effort* to come to a decision jointly.

The amendments also make it clear that parents do not need to consult each other on smaller day-to-day decisions while the child is in their care according to orders (like what the child eats or wears). This does not discount the importance that these decisions may have to a child’s development and well-being but can reduce tensions that may arise because of different parenting styles.

Changing final parenting orders

The amendments have set out the Court’s position that it will only entertain a new application after Final Parenting Orders are made about children if there has been a “significant change in circumstances”.

This is based on the understanding that it will only be in the child’s best interests to expose them to further family law proceedings if there has been a ‘significant change in circumstances’ since the making of the orders. This is commonly known amongst the legal community as the longstanding rule in *Rice v Asplund,* but it is now in the legislation.

Communications during family law proceedings

The changes now make it very clear that it is illegal to publish information that may identify parties connected with family law proceedings by social media. There are also examples of actions that are allowed, like a private conversation between you (as a party to the proceeding) and your friends or family.

Independent Children’s Lawyer

During parenting proceedings, an Independent Children's Lawyer (“ICL”) may be appointed to represent the child’s best interests. The role of the ICL is to provide an impartial perspective about what arrangements or decisions are in the child’s best interests.

ICLs could previously choose whether to meet with the child. ICLs are now required to meet with the child and provide the child with the chance to express their views. This is subject to certain exceptions, for example, if the child is under the age of five or they do not wish to meet with the ICL.

How a family lawyer can help

The changes come into effect from May 2024 and we will have a better sense of what, if any, difference the changes make in a practical sense.

You can access the *Family Law Amendment Act* through this link if you are interested in learning more about the changes.

At Emera Family Law, we offer a free initial consultation if you have any questions on how these amendments may impact you once they come into effect or you have any other queries about your family law matter.
