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Recent Changes to the Family Law Act Explained

On 6 May 2024, a raft of significant changes to the Family Law Act 1975 came into force, impacting many aspects of family law particularly those regarding parenting and arrangements for children of a couple seperating. While many people may have heard about these updates in the media, there seems to be a great deal of uncertainty about what these changes entail and what they mean for family law clients.

The changes can be summarised as follows:

Best Interests of the Child

Section 60CC of the **Family Law Act** previously set out a long list of matters that a Court had to consider when determining the **best interests of a child.** There was also a distinction between "primary" and "additional considerations." As of 6 May 2024, this has been replaced with a simplified list of six considerations, streamlining the process. These considerations are:

- What arrangements promote safety?
- What are the views of the child?
- What are the needs of the child (developmental, psychological, emotional and cultural)?
- What is the capacity of each person/parent to provide child's needs?
- What is the benefit to the child of having a relationship with both parents?
- Is there anything else particular to the circumstances of the child that needs to be considered?

Equal Shared Parental Responsibility

Prior to the recent changes, the **Family Law Act** included a presumption of **equal shared parental responsibility.** Many parties mistakenly believed this meant equal time, which was not the case. This presumption has now been removed, reducing confusion. However, this also means there is no longer a legislative presumption that it is in the **best interests of the child** for parents to make long-term decisions jointly.

Time Arrangements

Previously, the Court had to consider making an Order for equal time or substantial and significant time when an Order for **equal shared parental responsibility** was made. This is no longer mandatory. The Court can still consider these arrangements, but now it must do so with a primary focus on what constitutes the **best interests of the child.**

Joint Decision Making

As a result of the recent changes, parents are now encouraged to consult each other about major long-term decisions regarding their children, but it is not mandatory. However, the Courts can still make Orders allocating joint or sole decision-making **parental responsibility** for major long-term decisions.

Advisor's Obligations

Prior to the changes, advisors had to inform their clients about the primary and additional considerations as part of their 'best interests of the child' discussions. Since these considerations no longer exist in the legislation, advisors must now simply inform clients that the **best interests of the child** are paramount, referring to the factors in Section 60CC.

Amending Parenting Orders

The famous case of Rice v. Asplund (1979) sets out the circumstances under which a Court may reconsider final Parenting Orders. The recent changes to the Family Law Act now codify these principles. Specifically, a Court must not reconsider final Parenting Orders unless:

(a) There has been a significant change of circumstances since the final Order was made.

(b) The Court is satisfied that it is in the **best interests of the child** for the Order to be reconsidered.

The remaining changes address the enforcement of Orders, delegation of powers to Registrars, and a re-vamp of Section 121 Publication Restrictions.

Over time, we will see how these changes influence Court decisions. What is clear, however, is that the overarching principle behind all of these changes is the **best interests of the child**.

Summary

If you have questions about how these changes might affect your family law matter, contact Griffiths Parry Lawyers & Notary for personalised legal advice.

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