

Making sense of the Family Law Amendment Act 2023.

The *Family Law Amendment Act 2023* came into effect on 6 May 2024, making a number of changes to how parenting matters are decided under the *Family Law Act 1975 (the Act)*.

Some of the key changes include:

- 1 Removal of the presumption of equal shared parental responsibility;
 - 2 Simplification of the best interests considerations for children;
 - 3 Introduction of 2 standalone best interests considerations for First Nations children;
 - 4 Codification of law reconsidering final parenting orders;
 - 5 Introduction of harmful proceedings orders;
 - 6 Requirements for Independent Children's Lawyers to meet with children; and
- New provisions about compliance and enforcement of parenting orders.

This factsheet provides a brief summary of the changes. A selection of more detailed information resources are available on our website:
wlsnsw.org.au



Parental responsibility

Parental responsibility refers to who makes major long-term decisions for a child (such as education, religion, cultural upbringing, name and living arrangements). The presumption of equal shared parental responsibility and the subsequent mandatory decision-making framework for time arrangements with children (equal, substantial and significant time etc) has been removed from the Act.



These changes make clear that the Court will make decisions about who has sole or joint decision-making responsibility for a child based on what is in the best interests of that child.

QUESTION: If the other parent and I have joint decision-making does this mean our child will spend equal time with both of us?

ANSWER: No. Joint decision-making responsibility does not mean a child must spend equal time with each parent. The Court will decide time arrangements for a child based only on what is in the child's best interests.

QUESTION: If there are no legal proceedings, or court orders about decision making responsibility, do I have to consult with the other parent about major long-term issues?

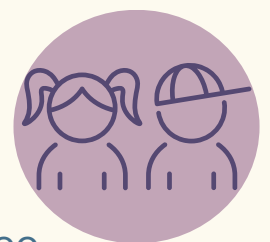
ANSWER: If it is safe to do so, parents are encouraged to consult one another about major long-term issues.

QUESTION: Is it possible for me to have sole decision-making responsibility for some specific issues and joint decision-making responsibility for other issues?

ANSWER: Yes, if it is in a child's best interests, the court may give sole decision-making responsibility to one person for some specific issues (such as health or education) while for other issues, there is joint decision-making responsibility.

A child's best interests considerations

The best interests of the child is the paramount (most important) consideration when the Court makes a parenting order. The list of considerations in deciding the child's best interests, set out in section 60CC of the Act, have been simplified to a non-hierarchical list of six general considerations, plus two additional considerations for First Nations children.



The six best interest considerations for all children are:

1. What arrangements promote the safety (including safety from family violence, abuse, neglect, or other harm) of the child and each person who has care of the child;
2. Any views expressed by the child;
3. The developmental, psychological, emotional and cultural needs of the child;
4. The 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, where it is safe to do so; and
6. Anything else relevant to the particular circumstances of the child.

When considering what arrangements promote the safety of the child, and any person who cares for the child, the court must consider any history of family violence, abuse or neglect involving the child or person, as well as any family violence order that applies or has applied to the child or a member of the child's family.

The two additional best interests considerations for First Nations Children recognise their right to enjoy their Aboriginal or Torres Strait Islander culture and to have the support, opportunity, and encouragement necessary to do so. The Court must consider the likely impact of any proposed parenting order on that right.

QUESTION: In considering the best interests of the child, will the Court consider a history of family violence?

ANSWER: Yes. When considering what arrangements are in the child's best interest, the Court must consider any history of family violence as well as any family violence orders (past or present).

Reconsidering final parenting orders

The Court must not reconsider a final parenting order unless the Court first considers whether there has been a significant change of circumstances since the final parenting order was made, **and** the Court is satisfied that in all the circumstances it is in the best interests of the child for the parenting order to be reconsidered.

This principle was previously only governed by case law often known as the *Rice & Asplund* rule but is now codified in the Act.



Introduction of harmful proceedings orders



The Court now has the power to make a harmful proceedings order that prevents one party from filing further applications without permission from the Court if the other party or children in the parenting matter would suffer harm if further proceedings were commenced.

Independent children's lawyers (ICLs) are to meet with the child(ren)



Independent Children's Lawyers must meet with the child and give the child the opportunity to express their views. There are some circumstances in which an Independent Children's Lawyer is not required to do these things, including where the child is under 5 years old.

QUESTION: What is an Independent Children's Lawyer (ICL)?

ANSWER: An ICL is a lawyer appointed by the Court to independently represent the child(ren's) interests. They are not however a lawyer instructed by the child(ren).

Contravention orders and when the Court can order makeup time



The changes to the Act expand the circumstances in which the Court can make orders regarding a contravention or breach of Court Orders. This includes an expansion of the type of orders which can be made, including makeup time if the child has missed time because of a contravention.

Additional information:

- fcfcoa.gov.au/news-and-media-centre/fla2023#
- ag.gov.au/families-and-marriage/publications/family-law-amendment-act-2023-factsheet-parents
- wlsnsw.org.au/training/flab2023

