

# Proposed Family Law Amendments: What Does it Mean For Families and Children?

On 30 January 2023, Attorney-General Mark Dreyfus released the draft Family Law Amendment Bill 2023 which seeks to amend the current Family Law Act 1975 (Cth), the Act which governs Family Law matters in Australia.

Predominantly, the bill seeks to reduce delays under the current Court system and improve access to support services. It will also replace and simplify the current legislative framework concerning parenting arrangements, with a particular focus on promoting the best interests of children and better protecting children and parties from exposure to family violence.

If enacted in its current form, the proposed legislation will:

### 1. Revoke the presumption of equal shared parental responsibility

Under the current legislative framework, there is a rebuttable presumption that it is in children's best interests for parents to have 'equal shared parental responsibility' for all major long-term decisions affecting a child.

The proposed legislation abandons the presumptions of equal shared parental responsibility and equal shared care. The Court will instead be required to consider the best interests of children (in consideration of the below factors) when making Orders about parental responsibility and time-spending arrangements.

### 2. Simplify how a Court determines what is in a child's best interests

Section 60CC of the Family Law Act 1975 (Cth) provides that there are two primary factors that the Court must consider when determining what is in a child's best interests:

1. the benefit of the child having a meaningful relationship with both parents; and
2. the need to protect the child from exposure to psychological harm, child abuse or family violence.

There are 14 additional considerations which must also be taken into account.

The proposed legislation replaces the raft of considerations with six "best interest" factors when ruling on parenting arrangements, including:

1. what arrangements would best promote the safety of the child and the child's carer/s.
2. any views expressed by the child;
3. the developmental, psychological and emotional needs of the child;
4. the capacity of the child's carer/s to provide for the child's developmental, psychological and emotional needs;
5. the benefit to the child maintaining a relationship with their parent/s or other significant people in the child's life, where it is safe to do so; and
6. anything other factor relevant to the child's circumstances.

The planned amendments also affirm the rights of Aboriginal or Torres Strait Islander children to enjoy and maintain their connection with their family, community, culture, country and language.

### 3. Expand the definition of family members to include a person who, in accordance with a child's Aboriginal or Torres Strait Islander culture, is related to the child

### 4. Impart additional obligations on Independent Children's Lawyers during Court proceedings

With the intention that a child's wishes as to their care arrangements can be more appropriately communicated to the Court, the proposed amendments will require Independent Children's Lawyers

to meet directly with children. Under the current system, there is no such requirement than an Independent Children's Lawyer meets with children.

### 5. Prevent perpetrators of family violence from using Court processes to inflict further harm on victims and children

In an effort to minimise the impact of Court proceedings on victims of family violence and prevent further exposure to harm, the Court will be afforded new powers to dismiss proceedings that may result in harm to a child or another party. The proposed changes will also limit a party's ability to provide private and confidential medical evidence to the Court in parenting proceedings.

### 6. Avoid the amendment of final parenting Orders unless there has been a significant change of circumstances

The proposed legislation seeks to codify the principle established in the case of Rice v Asplund (1979) such that, when considering whether to amend final parenting Orders, the Court must first consider whether there has been a significant change of circumstances since the final parenting Order was made and whether it is in the best interests of the child for that Order to be reconsidered.

### 7. Streamline the process of Court proceedings where a person is alleged to have contravened a parenting Order

### 8. Further limit and restrict parties from discussing details of their Court proceedings with any other person

The federal government has invited members of the legal profession and public to provide their feedback in relation to the Family Law Amendment Bill 2023 on or before 27 February 2023.

If you would like any further information on **Family Law** or these amendments and how they could affect you and your family, please call 8238 6666 or contact today's author **Natalie Jonas** or any of our **Family Law team.**