

FAMILY LAW

PROMOTIONAL FEATURE

Child's best interests at forefront of reforms

Michael Osrin from Nicholes Family Lawyers explains the recent changes to the Family Law Act.

AUSTRALIAN family law has seen a wave of new reforms dedicated to progressing parenting matters in the family law system. As of May 6 this year important changes to the Family Law Act 1975 (Cth) have come into effect in response to the Family Law Amendment Act 2023 (Cth).

These reforms have largely been introduced to make parenting arrangements for children after separation simpler, while making it safer and more accessible for families to navigate the intricate and often-ambiguous family law legal system. The changes operate to assist the Court in determining what is in the child's best interests, which under the existing legislation is the paramount consideration to which the Court must have regard when deciding to make a particular parenting order.

Prior to the recent amendments, the Court was required to assess the best interests of the child by reference to two primary considerations and 14 secondary considerations. Yet as of May 6, these principles have been simplified into six core considerations, which are summarised as:

- The promotion of the safety of the child and each person who has care of the child
- The views expressed by the child
- The developmental, psychological, emotional and cultural needs of the child



Michael Osrin.



Important changes to the Family Law Act.

Photo: Dreamstime

- The capacity of each person who has, or is proposed to have, parental responsibility for the child to provide for the needs of the child, including psychological and cultural needs
- The benefit to the child of being able to maintain a relationship with their parents and other important people in the child's life, where safe to do so
- Anything else that is relevant to the particular circumstances of the child

Refining these principles offers greater clarity concerning what factors the Court must consider when deciding a child's best interests in parenting proceedings. Further, as these principles are not hierarchical, the Court is afforded more discretion to consider the unique circumstances of each case.

The most topical reform that has come into effect is the removal of the presumption of equal shared parental responsibility.

In its previous form, the presumption was designed to promote parents having an equal say in the long-term decisions relating to their child. Such a presumption could be rebutted if the child were at risk of family violence, or it would not

otherwise be in the child's best interest. However, this presumption was commonly misunderstood as providing that parents are entitled to equal time with their child.

The removal of this presumption negates this false expectation. It also allows the courts to decide on the allocation of parental responsibility subjectively on a case-by-case basis, with the child's best interests at the forefront of any consideration, instead of automatically presuming that it is in the best interests of the child for both parents to make joint decisions in relation to major long term decisions.

A knock-on effect of this is the removal of mandatory consideration of certain time arrangements. Prior to this change, when the Court determined that equal time was not in the child's best interests, it had to consider whether "substantial and significant" time would be a more appropriate split. The repeal of this provision, which was controversial at the time of its inception, has streamlined parenting decision-making processes which will hopefully reduce misunderstandings among parents moving forward.

Additional clarity has been offered to parents regarding how they make joint

decisions on long-term issues, such as the child's health, education and religious upbringing. These new sections guide parents in situations where there are no court orders; affirm the role of courts in making orders concerning parental responsibility; and explain the consequences of such orders.

The amendments also codify the common law rule in *Rice v Asplund* (1979) which sets out the circumstances in which final orders can be reconsidered. This provision makes it so that where a final parenting order has been made, the Court must not reconsider the final order unless there has been a significant change in circumstances, or the Court is satisfied it is in the best interests of the child.

If you have any concerns or require specific legal advice regarding any changes to the law that have recently come into effect, please contact Nicholes Family Lawyers. We understand there are intricacies of religious considerations in parenting matters and can offer tailored advice to individuals within the Jewish community regarding the complex intersection between Jewish and Australian law. We also have expertise in all other areas of family law. Should you or someone you know require legal advice, please contact us at (03) 9670 4122 or by email at reception@nicholeslaw.com.au.

Michael Osrin Associate, Nicholes Family Lawyers



Michael Osrin is a highly skilled family lawyer dedicated to guiding clients through a wide range of family law issues. With expertise in parenting matters, property settlements, and child protection cases, he is committed to delivering the best results for his clients.

Acknowledging the emotionally charged nature of family law disputes, Michael adopts a compassionate and dedicated approach, offering expert advice to his clients. His wealth of experience allows him to navigate these sensitive matters with skill, ensuring that clients receive the utmost support and guidance.

+61 3 9670 4122

www.nicholeslaw.com.au

Level 12, 460 Lonsdale St, Melbourne VIC 3000

Office 1, Level 1/343 Pakington St, Newtown VIC 3220

reception@nicholeslaw.com.au

michaelo@nicholeslaw.com.au

