

CHANGES TO THE FAMILY LAW ACT

In 2006, new provisions affecting the way the law works when families separate were introduced into the Family Law Act. On 7 June 2012, changes to the Act were made to better protect children from harm, and improve the family law system's response to family violence and abuse.

Deciding on the best interests of the child

The Family Law Act still requires a court to regard the best interests of the child as the most important thing when it is making a parenting order. The changes to the Act mean that the court must take the following into account when deciding what is in the best interests of the child.

Primary considerations:

The first considerations a court needs to take into account are:

- the benefit to the child of having a meaningful relationship with both his or her parents
- the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

These factors are considered in light of each child's individual situation. The court is required to give greater weight to the second factor, ensuring that the child's safety comes first.

Additional considerations:

Other factors must also be taken into account. These factors include such things as any views expressed by the child, the kind of relationship the child has with his or her parents and others (such as grandparents), and any practical difficulties or expense of a child spending time with a parent.

Equal Shared Parental Responsibility

Except in cases of family violence or child abuse, when a court is making a parenting order, it is required to presume that it is in the children's best interests for their parents to have equal shared parental responsibility.

This is not saying that the child should spend equal time with each parent. Rather, equal shared parental responsibility means that both parents have an equal role in making decisions about major long-term issues that affect their children, such as schooling and health care.

The presumption of equal shared parental responsibility does not apply where there are reasonable grounds to believe that a parent of a child (or a person who lives with the parent) has engaged in family violence or child abuse.

Does this mean equal time?

Whenever it decides that the parents will have equal shared parental responsibility, the court must consider whether spending equal time with each parent is in the best interests of the child and is reasonably practicable. If it is not, the court must consider an arrangement that allows both parents substantial and significant time with the child, again, so long as it is in the child's best interests and is reasonably practicable.

Substantial and significant time

'Substantial and significant time' refers to a child spending time with both parents on a mix of weekends, holidays, and regular days. It means both parents are involved in the child's daily life as well as sharing in special events, birthdays and family and other events of significance, such as weddings.

Failure to fulfill responsibilities

Courts are now able to take into account the times when parents fail to fulfill their major parenting responsibilities, such as not paying child support or not cooperating with the other parent to allow him or her to spend time, or communicate, with the child.

Time with grandparents

The changes recognise and acknowledge the importance of children spending time with their grandparents and other relatives, provided this does not put children at risk of harm.

Family dispute resolution

The changes to the law phase in a requirement for parents who want to take a parenting matter to court, to first attempt family dispute resolution with an accredited family dispute resolution practitioner. The requirement does not apply in circumstances where family dispute resolution may not be appropriate, including in cases involving family violence or child abuse.

Improved court processes

If parents can't agree on issues about their children and decide to go to court, the law will now take a less formal approach in all children's cases.

Changes to terminology

Certain terms have been removed from the revised Family Law Act, or replaced with new terms. For example, instead of 'residence' and 'contact', the law now refers to persons whom a child 'spends time with' and 'communicates with'.

Definition of violence

The definition of 'family violence' has been changed. See facts sheet entitled Violence and Family Law.

Can I go back to court to get my parenting orders changed, using the new provisions?

If you want to change a parenting order that was made before 1 July 2006 to reflect the new provisions, you will need to satisfy the court that there has been a significant change in circumstances that makes such a change necessary. The change to the Family Law Act is not a significant change in circumstance in itself.