



Consultation on Exposure Draft – Family Law Amendment Bill 2023

The Australian Government is consulting on draft changes to the Family Law Act to put children's interests front and centre and make the law simpler

There have been a number of inquiries over the past few years looking into how the Family Law Act works, including a major inquiry by the Australian Law Reform Commission (the ALRC) in 2019 (see [Review of the family law system](#)). Central to the ALRC recommendations relating to children is that the most important consideration when determining living arrangements and time with parents should be what is in the best interests of the child. The ALRC also recommended that the legislation be simplified, noting that family law is complicated and can be confusing to understand.

The Government has considered the recommendations of recent inquiries and the views of many individuals and groups. In response, it has developed a draft *Family Law Amendment Bill 2023* (the draft Bill) which aims to change the Family Law Act to address some of the most important issues raised in relation to children and parenting as an urgent priority.

This factsheet will help you to understand the most significant changes proposed in the draft Bill.

The proposed law will focus on the individual needs of each child

Most parents in Australia successfully and cooperatively make their own agreements about caring for their children, sometimes with assistance from family lawyers and/or qualified counsellors. If the draft Bill becomes law these arrangements will not change, but it will be clearer for parents looking to the law for guidance and lawyers who advise them that the focus of these arrangements should be on the needs of children.

If parents cannot agree they can choose to go to court. Cases that end up in court often involve concerns about family violence, health issues or substance abuse. These are complicated matters which the court must consider very carefully. In these complex cases, the court's primary focus should be on making arrangements that meet the best interests of the children involved. Any presumptions about the allocation of parental responsibility or consideration of specific time arrangements can take away from a focus on the needs of the individual child.

As part of the proposed reforms, the Government is repealing the presumption of 'equal shared parental responsibility' (section 61DA) and the related provisions to consider specific care-time arrangements (section 65DAA). Recent inquiries into the family law system have concluded that these parts of the law are commonly misunderstood.

An order for 'equal shared parental responsibility' simply means that parents are required to consult with each other when making major long-term decisions (for example, in relation to education and health). However, as the ALRC pointed out, this part of the law is commonly misinterpreted as creating a right to equal shared time with children when this has never been the case. This means that parents can go into negotiations based on incorrect assumptions about their entitlements. This can lead to inappropriate arrangements for children, prolonged litigation and increased parental conflict.

It is important to understand that, if these proposed changes become law, judges will still be able to make orders for shared parental responsibility and equal time – but the decision-making process for this will be more clearly focussed on the best interests of the child.

Making the list of 'best interests of the child' factors clearer

At the moment, when the court is asked to consider the 'best interests of the child', it must consider a lengthy list of factors, including two primary factors and thirteen additional factors (section 60CC). This is confusing and leads to lengthy court judgments. The draft Bill simplifies this list of 'best interest factors' to six factors, to provide a contemporary framework for courts and for separating families to use as a guide when making their own arrangements.

Aboriginal and Torres Strait Islander children

There is a proposed separate factor to emphasise that making parenting arrangements that keep a connection to culture is important for the best interests of Aboriginal and Torres Strait Islander children. This is not a new factor, but has been included as a standalone factor to ensure this consideration is prominent. There is also a proposed definition of member of the family that is more inclusive of Aboriginal and Torres Strait Islander concepts of family and kinship, which are wider than those currently recognised in the Family Law Act.

Making it clear when a parenting order can be changed

The draft Bill also aims to remove any confusion about when a parenting order can be changed. The draft Bill makes it clear that a parenting arrangement made by a court can only be changed if there has been a significant change in circumstances since the order was made. Courts have set out what this means in court judgments. The draft Bill uses this case law to create a clear list of the factors that a court should look at in deciding whether it would be in the child's best interests to reconsider a final parenting order.

Hearing children's views

The draft Bill will make it a requirement, in the majority of cases, for Independent Children's Lawyers (ICLs) to meet with children to make sure their views are considered when the court makes parenting arrangements. It also proposes removing the current requirement that ICLs may only be appointed in exceptional circumstances in matters brought under the *Hague Convention on the Civil Aspects of International Child Abduction*.

Simplifying other areas of the law

Enforcing parenting orders

One of the aims of the draft Bill is to make key sections of the Family Law Act easier for parties to understand and for the courts to apply. Division 13A deals with the enforcement of parenting orders. The ALRC said that it is "needlessly complex".

The draft Bill simplifies Division 13A to make the consequences of not complying with parenting orders clearer and more straightforward. These proposed changes are designed to help parents understand the importance of complying with parenting orders unless there is a reasonable excuse not to, which will, in turn, help protect the best interests of children.

Making it clearer when you can share details of family law proceedings

The Family Law Act prohibits the publication or sharing of information that identifies people involved in a court proceeding (section 121). This law protects the privacy of families and children. However, the ALRC found that there is often confusion about how far this protection extends.

The draft Bill makes it clearer that certain actions are acceptable, such as a private communication between a party to proceedings and a family member or friend, or a private communication to a professional, academic or researcher. It also makes it clearer that public communication via online channels, such as social media, is not allowed.

Proposed new court powers to protect people from the harmful effects of litigation

The ALRC was concerned about the misuse of the family law system by perpetrators of family violence, to achieve ends other than those for which family law processes are designed. This can involve submitting multiple applications without merit in order to control, threaten or harass a former partner. The draft Bill includes two new powers for courts to empower the courts to better protect people from the harmful impacts associated with litigation. These are:

- a power to exclude evidence of records relating to the provision of health services, such as medical or counselling records ('protected confidences') in family law matters, and
- a power for the court to stop a person from filing any further family law applications in circumstances where they are likely to be harmful to a respondent or a child.

A new definition of 'overarching purpose of family law practice and procedure' is aimed at making sure that the court, and other parties involved in family law proceedings, focus on the safe resolution of disputes in a manner consistent with the best interests of the children involved.

New approaches to ensure the quality and safety of key family law processes and professionals

Many families may engage with a family report writer who undertakes a family assessment to assist the court in making decisions about parenting arrangements. The ALRC recommended that additional approaches to ensure the quality and safety of family report writers were implemented to support families.

The draft Bill will introduce an ability for the Government to specify standards and requirements for individuals who provide these services. The draft Bill only provides the power for the Government to set these standards, with the detail on the scope and parameters of any standards to be developed through regulations at a later date following further consultation.

More information

Further information on what these proposed changes will mean for separating or separated parents is included in the Consultation on Exposure Draft Family Law Amendment Bill 2023: Frequently Asked Questions document.

The Australian Attorney-General's Department is consulting publicly on these proposed changes until 27 February 2023. You can access a detailed discussion paper and a full copy of the Exposure Draft Family Law Amendment Bill 2023 on the Attorney-General's Department website. If you have views on the draft Bill that you would like to share, you can find instructions on how to share your views with the Attorney-General's Department on the website.