

Episode 145: Summary

Episode name: A New Chapter in Family Law: Navigating Amendments From 2023 Onwards

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What area(s) of law does this episode consider?

The *Family Law Amendment Act 2023* (Cth) and subsequent amendments.

Why is this topic relevant?

The *Family Law Amendment Act 2023* (Cth) has introduced sweeping changes to the *Family Law Act 1975* (Cth), reshaping the landscape of family law in Australia. These changes, which came into effect on May 6th, 2024, have far-reaching implications for family law practitioners and individuals navigating the family law system. One of the key areas impacted by these amendments is the framework for making parenting orders, maintaining focus on ensuring the best interests of the child are paramount.

These amendments have brought about a significant shift in how family violence and abuse are addressed in family law matters, emphasising the safety and well-being of children and all parties involved. Furthermore, the repeal of the presumption of equal shared parental responsibility has marked a fundamental change in how parenting arrangements are determined, placing greater emphasis on individual circumstances and practical considerations.

What legislation is considered in this episode?

Family Law Amendment Act 2023 (Cth)

Family Law Act 1975 (Cth) (**Family Law Act**)

Crimes Act 1900 (NSW)

What cases are considered in this episode?

In the marriage of Rice and Asplund (1979) FLC 90-725

- In October 1975, a court granted custody of a child born in December 1971 to the father, but nine months later, the mother applied to vary the custody order, which the court granted, awarding custody to her. The issue was whether the second court was justified in altering the initial custody order without being bound by the first court's findings. The Court held that while earlier decisions and reasoning should be considered, a custody order could be revisited if there were significant changes in circumstances or undisclosed material factors, with the welfare of the child being paramount; this ensures that custody disputes are not unnecessarily re-litigated to the detriment of the child.

What are the main points?

- The amendments primarily centre on creating parenting orders that prioritise the best interests of children.
- The *Family Law Act* has restructured the way the court approaches determining the best interests of the child in parenting orders, with a revised list of factors in section 60CC. This updated section provides a more balanced approach for the court by removing the hierarchy of considerations and allowing judges to consider any other relevant factors when making parenting orders.
- The considerations involve understanding the child's views and needs, evaluating the parent's capacity to care for the child, and examining the child's relationships with other family members to determine what is in the child's best interests within the family unit.
- The biggest change from the amendments is the shift in the concept of parental responsibility in family court orders, with the removal of the presumption of equal shared parental responsibility.
- Previously, courts would consider granting equal time or significant time based on this presumption, but now the focus is on determining the best interests of the child without a default presumption.
- The amendments related to family violence demonstrate a shift in language towards a more positive and future-focused approach, emphasising safety and the promotion of wellbeing for children, parents and carers.
- The old section 60CC used the word "harm," which has now been replaced with the word "safety." This change reflects a focus on identifying safety issues and determining the best approach to address them in a specific situation.
- New provisions have been implemented in the *Crimes Act 1900 (NSW)* to criminalise various forms of family violence, which can include emotional, psychological, and financial control, along with physical harm to pets.
- The amendments require Independent Children's Lawyers to meet with children over five years of age, unless certain exceptions apply, such as if the children have expressed a wish not to meet with the lawyer or have already met with multiple family report writers or health professionals regarding their struggles with litigation.
- The Family Court process which typically involves multiple applications before reaching a final hearing may now be streamlined with the implementation of a new central practice direction. A provision requiring parties to seek court

permission before filing additional applications aims to reduce vexatious litigation and protect victims of family violence.

- The *Rice v Aspland* rule has been codified with recent amendments in family law regarding reopening parenting orders. Section 65DAAA outlines the criteria for the court to consider when deciding to entertain changes to final parenting orders based on significant changes in circumstances and the best interests of the child.
- The court may reject new applications for litigation and reconsideration of orders if it is not in the best interest of the child, even if significant changes in circumstances occur.
- The wording in the new section is simpler and more accessible for parents without legal representation, making it easier to understand and navigate the factors being considered.
- The removal of the presumption of equal shared parental responsibility has led to variations in wording used by different registrars in documenting joint decision-making orders, causing uncertainty in how to interpret and apply the new requirements.
- The amendments aim to enhance understanding of family violence across legal professionals as well as ensuring family report writers are adequately trained. This increased comprehension is crucial for effectively addressing the safety concerns arising from past and potential future impacts of family violence on families.
- If you're working in family law, stay informed on the evolving case law related to the amendments by attending seminars and conferences and engaging with legal colleagues for interpretation. Additionally, focus on safety issues and future wellbeing of families by collaborating with other professionals such as psychiatrists and therapists to provide holistic support and prevent families from re-entering the legal system.

What are the practical takeaways?