

Key Points

- The new presumption of “equal shared parental responsibility”, does not apply in cases where there is child abuse or family violence
- The requirement that people attend mediation does not apply if there is family violence or abuse
- A fear or apprehension of family violence must be “reasonable”
- A parent who makes false allegations of violence or abuse may have to pay the other parent’s legal costs.

From 1 July 2006 the family law system will put greater emphasis on the benefits to children of a meaningful relationship with both parents and introduces a presumption of equal shared parental responsibility. This report looks at how this change affects families confronted by issues of violence.

The changes: an overview

Changes to the law governing relationship breakdown are comprehensive. These include:

- a new presumption of equal shared parental responsibility, provided that there has not been violence or abuse. This means that in most cases, parents will have an equal role in making decisions about major long term issues involving their children
- the most important considerations for the court are: (1) the right of children to know their parents, and (2) the right of children to be protected from harm
- a requirement that the court considers whether it is practical and in the best interest of children to spend equal time with both parents, and
- a new service of Family Relationship Centres, to provide advice and help parents reach agreement outside the court system.

Family violence: how does the new legislation apply?

Arrangements for children should not expose people to family violence.

The presumption of equal parental responsibility operates in all cases except if there are reasonable grounds to believe that a parent has engaged in child abuse or family violence. In such cases, the court is also not required to consider whether the child should spend “substantial” time with both parents.

The new requirement that people attend family dispute resolution before applying to a court for a parenting order does not apply where there is family violence or abuse.

The court has a duty, when considering making orders, to protect children from family violence, abuse and psychological harm.

Family violence definition

Family violence is where a person has a reasonable fear or apprehension for their wellbeing or safety because of the threats or actions of another person towards them, their property or a member of their family

How will the court determine whether a fear or apprehension of violence is “reasonable”?

In determining whether the fear or apprehension is reasonable, the court will consider the person’s individual circumstances.

Family violence under the new family law regime

Allegations of family violence

The new laws are designed to avoid a parent being prevented from seeing their child as a result of false allegations of violence.

The effect of family violence orders (commonly known as AVOs or IVOs) in children's proceedings has changed. Interim (eg emergency) and undefended family violence orders are not considered proof of violence. This is because these orders are often made without the alleged perpetrator giving their side of the story.

If one parent makes a false allegation or statement regarding violence to the court, that parent can be made to pay the legal costs of the other person.

Family Relationship Centres

Family Relationship Centres can help separated parents reach agreement about parenting issues through dispute resolution, such as mediation and counselling.

Before most cases can go to court, parents must obtain a certificate stating that they have tried dispute resolution.

This requirement does not apply if there are reasonable grounds to believe that there has been or there is a risk of family violence or abuse.

In those cases, a counsellor or dispute resolution practitioner will normally advise both parties about services and options (including alternatives to court action) before the case can go to court.

The dispute resolution practitioner will assess the situation and may provide a certificate stating that the matter is not suitable for out of court dispute resolution.

The requirement of dispute resolution does not apply in urgent cases if the delay would expose the person or child to abuse or violence.

In addition, the federal government says that staff at the Family Relationship Centres will be trained to screen for violence and abuse.

They will also be able to give advice on where families can go to get more help to address the issue.

Coercion or duress in parenting plans

There is a new focus on parenting plans to reduce the amount of time separating parents spend in court.

Parenting plans are agreements reached between parents outside the court system and are different from parenting orders that are made by the court.

Parenting plans will generally be written and signed agreements between parents, setting out the day-to-day arrangements for their children.

Where the child lives, what time the child spends with each parent, how the plan can be altered and how future decisions will be made can all be included in a parenting plan.

The plans are voluntary and they must be made free from threats or coercion.

The new laws also enable parents to change court orders by agreement, to take into account the changing circumstances of themselves or their children.

There is protection for parents who may be forced by the other parent

into changing arrangements against their will.

If there is good evidence that one parent may use coercion or duress, or a child is at risk of physical or psychological harm, the court can order that the arrangements may only be varied by the court itself.

Time frame for court orders in relation to child abuse or family violence allegations

The court must act as quickly as possible on child abuse or family violence allegations. This should be within 8 weeks of an application being made to the court.

There must be a clear relationship between the allegations of violence or abuse and the orders that the court is asked to make.

The new laws also give the court the power to require state and territory agencies to provide information and reports that they may have about allegations of family violence or abuse.

The changes to the Family Law Act 1975 are complex. For help specific to your situation, you should speak to a family lawyer. For more information contact Rigoli Lawyers on tel: 8742 3199.