

Guide to the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011

The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (the Act) was passed by the Senate on 24 November 2011 and received Royal Assent on 7 December 2011.

The Act is a response to a number of reports evaluating the 2006 amendments to the *Family Law Act 1975* (Cth)¹. The reports considered in detail the intersection of family violence and family law and highlighted a range of problems with existing legislation and procedure in the family law system that place children at risk of family violence and sexual abuse.

The Act aims to improve the framework of decision-making to give priority to a child's safety in determining what is in the best interests of the child and to make it easier for allegations of family violence and sexual abuse to be brought before the court.

When will these changes apply?

The changes will come into effect on 7 June 2012.

What are the key changes introduced by the Act?

The key changes to the *Family Law Act* are to:

- Broaden the definition of 'family violence' and 'abuse'.
- Direct courts to give greater weight to a child's safety as a primary consideration in determining what is in the child's best interests.
- Remove the 'friendly parent' provision as an additional consideration.

¹ See *Evaluation of the 2006 family law reforms* by the Australian Institute of Family Studies (AIFS), the *Family Courts Violence Review* by Professor Richard Chisholm AM and a report by the Family Law Council titled *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*.

- Amend existing adviser obligations and impose new obligations when providing advice on parenting agreements, to encourage parents to prioritise a child's safety.
- Require parties to notify the court of allegations of family violence or abuse of a child as well as require parties to disclose any involvement of child welfare agencies.
- Direct courts, when considering applications for parenting orders, to inquire about past or future risk or previous experience of abuse or family violence.
- Provide immunity to state and territory child protection authorities to make it easier to participate in family law proceedings where appropriate.
- Give effect to the Convention on the Rights of the Child (the CRC) as an object of Part VII.

Below is a table which sets out the key changes in the Act including the relevant new or amended section in the *Family Law Act* and a short explanation of the substance of the amendments.

The table below sets out the relevant sections of the *Family Law Act (FLA)* and an explanation of the changes:

Amendment	FLA section	Substance of the amendment
New definition of 'family violence'	s.4AB	The new, broader definition of 'family violence' will include socially and financially controlling behaviour and exposing a child to family violence.
Broader definition of 'abuse'	s.4(1)	The amended definition of 'abuse' will include serious neglect and causing a child serious psychological harm. Serious psychological harm includes a child being subjected to or exposed to family violence.
Primary considerations in determining best interests - greater weight to be given to child safety	s.60CC(2A)	The amendment requires that the court give greater weight to the 'need to protect the child from physical or psychological harm, from being subjected to, or exposed to, abuse, neglect or family violence' over the benefit of the child having a meaningful relationship with both parents.
Additional considerations in determining best interests - removing 'friendly parent' provision	repealed s.60CC(3)(c), (4) & (4A)	The court will no longer be required to consider the 'willingness and ability' of a parent to facilitate a relationship with the other parent in determining the best interests of the child.
Additional considerations in determining best interests - new consideration of parental involvement	s.60CC(3)(c) and (ca)	The court may additionally consider the extent to which each parent has fulfilled his or her obligations to maintain the child, the extent to which he or she has taken the opportunity to participate in decision making in relation to the child as well spending time with and communicating with the child.
Additional considerations in determining best interests – broader scope of family violence orders	s.60CC(3)(k)	The court may consider a broader scope of family violence intervention orders as the Act removes the requirement that orders be 'final' or 'contested'. The change will capture interim orders, orders made by consent or orders that are no longer current.

New adviser obligations	s.60D	<p>'Advisers' who discuss matters arising under Part VII of the <i>Family Law Act</i> and parenting plans, will be required to encourage parents to consider their child's best interests as paramount and where the child is at risk of harm, to advise parents that this should be given greater weight over the benefit of a meaningful relationship with both parents.</p> <p>'Advisers' include legal practitioners, family counsellors, family dispute resolution practitioners and family consultants.</p>
Disclosure of family violence	<p>repeal of s.60K</p> <p>new s.67ZBA & 67ZBB</p>	<p>Where an 'interested person' raises an allegation of family violence or risk of family violence as a consideration for the court, the 'interested person' will be required to file and serve a notice with details of the allegations. Whilst section 60K will be repealed, its substance, requiring the court to take prompt action once a notice is filed, is included in new section 67ZBB.</p> <p>'Interested persons' include a party to the proceeding, an independent children's lawyer or another person prescribed by the rules.</p>
New requirement to disclose child protection matters	s.60CH & s.60CI	Parties to the proceeding will be required to notify the court of any child protection matters including any notifications or investigations.
Removal of mandatory cost orders	repeal of s.117AB	The court will no longer be compelled under this section to order costs against a party that makes a false allegation or statement.
Immunity from costs order for state, territory or commonwealth child protection authorities	s.117	If a child protection authority intervenes to become a party to a Family Court proceeding and acts in good faith, the authority is immune from cost orders.
Giving effect to the Convention on the Rights of the Child	s.60B	The Act gives effect to the Convention by including an additional object of Part VII of the FLA.

Disclaimer: The information in this guide is intended only to provide a summary and general overview of the changes. It is not intended to be comprehensive nor does it constitute legal advice.