A revamp to the Family Law system? How a Child Custody Lawyer's role may change because of proposed reform

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The family law system has been a subject of scrutiny over the years. The legal framework is made up of specialists (e.g., child custody lawyers) who continue to work within a unique area of law that has a substantial effect on an individual's family structure. With the recent merger of the Federal Circuit Court of Australia and the Family Court of Australia in 2021, the now Federal Circuit and Family Court of Australia ('FCFCOA') was formed to reduce the complex legal processes arising from the dissolution of a relationship.

However, as of this year, the Federal government has announced plans to 'revamp the strained family law system'. A child custody lawyer should be aware of the proposed changes in the *Family Law Amendment Bill* 2023 as it may very well be the case that the family law legal system may be subject to change in the near future.

On 30 January 2023, the Attorney-General's Department of the Australian Government released a draft bill to address the issues it believes remain within the current family law system. The draft bill places a focus on the welfare of children who are entangled in high tension disputes in the court. Essentially, the changes proposed seek to prioritise and place children into the centre of the family law system.

An example of change?

The proposed draft affords recognition to a child's best interests when reviewing the court's power to make a parenting order. Under the current legislation, s 65D states:

1. *In proceedings for a parenting order, the court may, subject to sections 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans) and this Division, make such parenting order as it thinks proper.*

The government proposes that the court's consideration of s 61D be removed. The effect of this would be that the court will no longer be restricted to a presumption of equal shared parental responsibility. In other words, a child custody lawyer will know that currently when making an order, the court must accept that it is in the best interests of the child for their parents to have equal and shared responsibility over them. Should the proposed reform come into effect, then the court would no longer be bound to the presumption and instead would be obligated to focus on the child's best interests in determining who has parental responsibility and how much of this should be afforded to each party.

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Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers