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Family Law
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June 2024 Newsletter

Welcome to the third edition of the Family Law Pathways Network newsletter 2024.

Gold Coast

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A WORD FROM OUR CHAIR KATE KEATING

1. At the time of publishing this Newsletter, the amendments to the Family Law Act (“the Act”) in relation to parenting matters will have been in force for a little over one month.

2. All families and professionals in the Family Law space need to be aware of the significant changes which commenced on 6 May 2024 as they apply to all new matters and to existing matters already in the Court system. The amendments are of course also relevant to all separating parents and their advisors when negotiating the often difficult decisions regarding the future parenting arrangements for children following separation.

3. Whilst there have been numerous amendments to the Act, the most significant changes are to Part VII (Children). The objects have been simplified as follows:

1. To ensure that the best interests of children are met, including by ensuring their safety; and
2. To give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

Professionals are encouraged to familiarise themselves with the Articles contained within that Convention.

In order to give effect to these new objects, the other amendments to Part VII include the following important amendments:

Amended Section 60CC – Best interests of the child

4. Whilst the best interests of the child remain the paramount consideration for a Court when determining whether to make a particular parenting Order, the simplified version of the Section 60CC factors which the Court now must consider when determining a child’s best interests have been refined and reduced to the following 6 factors:

1. What arrangement will promote the safety (including safety from being subjected to or being exposed to family violence, abuse, neglect or other harm) of the child and the child’s carers;
2. Any view expressed by the child;
3. The developmental, psychological, emotional and cultural needs of the child.
4. The capacity of each parent to provide for those needs;
5. The benefit to the child of being able to have a relationship with both parents and other people who are significant to them, where it is safe to do so; and
6. Anything else that is relevant to the particular circumstances of the child.

5. It is also now legislated that if the child is Aboriginal or Torres Strait Islander, the Court must consider the likely impact any proposed Parenting Order would have on the child’s right to enjoy their culture by having the support and opportunity to connect and to maintain their connection with their family, community, culture, country and language. The definition of “member of the family” is also broadened to encompass individuals related to the child according to their Aboriginal or Torres Strait Islander cultural practices.

6. There is a heavy focus in the new legislation on “safety” with the new Section 60CC(2A) requiring the Court to consider any history of family violence, abuse or neglect, and any Family Violence Order, past or present, when considering the arrangements that would best promote the safety of a child and each person who has the care of a child.

Repeal of the presumption of equal shared parental responsibility

7. Importantly, the presumption of “equal shared parental responsibility” has been removed, together with the requirement for the Court to then consider equal time or substantial or significant time. The starting point for any negotiation or Court submission should therefore now be focussed on the particular needs of each individual child and the safety of that child and the person caring for that child.

8. Previously, the Court was required to apply a presumption in each matter that it was in the child’s best interest for the parents to have equal shared parental responsibility for the child unless there were matters such as family violence issues involved. If an Order was made under the previous regime for equal shared parental responsibility, the Court then had an obligation to consider making an Order for the child to spend equal time or significant and substantial time with each parent if it was in the child’s best interests for that to occur and was reasonably practicable.

9. The new legislation still provides that separated parents each retain parental responsibility. The Court can then decide to allocate parental responsibility about major long term issues based on what is in the child’s best interests. Whilst these changes are in their infancy, we may see more frequent Orders allocating parental responsibility for different types of decision-making in relation to major long-term issues – with the Court ordering that parents have joint decision-making or sole decision-making in relation to all or specified major long-term issues. An example of such an Order could be:

“That the mother has sole decision-making responsibility in relation to the child’s education, and the parties otherwise have joint decision-making responsibility for all other major long-term issues in relation to the child”.

Reconsideration of Final Parenting Orders

10. The rule in *Rice v Asplund* 1979 is now codified in a new Section 65DAAA. This section makes it clear that a Court must not reconsider a Final Parenting Order unless it has considered whether a significant change in circumstances since the previous Order was made has been established, and that it is in the best interest of the child for the Order to be reconsidered. The types of matters which the Court may take into account when considering if it is in the best interest of the child for an Order to be reconsidered include:

1. The evidence which is available to the Court when the previous Final Parenting Order was made.
2. What new evidence (if any) a party is relying upon which was not available to the Court at the time of making the Final Parenting Order.
3. The likelihood that a Court would make an Order significantly different to the previous Order when taking into account the new evidence available.
4. The potential benefit or detriment to a child as a result of reconsidering the Final Parenting Order.



The Role of Independent Children's Lawyers (ICL's)

11. Previously, when an Independent Children's Lawyer was appointed by a Court to represent the best interests of the child during Family Law Proceedings, the ICL had the discretion as to whether or not they would meet with the child and provide an opportunity for the child to express their views.

12. Under the new legislation, an ICL now has a mandatory obligation to meet with the child and to provide them with the opportunity to express their views before any Final Orders are made. There are certain exceptions to this requirement set out in the legislation, for example, if the child is under the age of 5 years old, if the child does not want to meet with the ICL, or a child does not wish to express his/her views, or exceptional circumstances (such as the ICL forming a view that such a meeting may expose the child to a risk of physical or psychological harm that cannot be adequately and safely managed). It is, however, up to the Court to determine if it is satisfied that exceptional circumstances do exist, and the Court may issue an Order requiring the ICL to meet with the child and provide an opportunity for the child to express his/her views before the Court makes a Final Order.

13. There may be issues arising from this change if an ICL provides evidence to the Court regarding what a child has said to the ICL, and this evidence is then challenged by one or other of the parties to the litigation. This may lead to the ICL being required to give evidence and then be cross-examined and, if this is to occur, will there be a challenge regarding the ability of the ICL to continue in that role?

Other changes

14. There are of course other significant changes dealing with:

- a. enforcement of child-related Orders to see Registrars of the Court now having the power to make "make-up time" Parenting Orders and providing a broad range of sanctions that the Court can apply when Orders are not complied with;
- b. changes to advisers' obligations, most importantly the amendments have removed the obligation for advisers to advise parents that they must consider the possibility of the child spending equal time with each parent or, if that is not reasonably practicable, that the child spend substantial or significant time with each parent;
- c. communication of details of Family Law proceedings;
- d. the new Part XIVB simplifies the language about communication of details obtained during Family Law proceedings and clarifies when parties can share information obtained by them during the course of those proceedings;
- e. appointment of ICLs in Hague Convention matters – the changes remove the requirement that an appointment of an ICL in these circumstances can only be made in "exceptional circumstances";
- f. information sharing – changes broaden the scope of information able to be sought in recognition of the complex nature of family violence, child abuse and neglect which will enable the Court to obtain necessary information from various agencies, or for an agency to act on its own initiative and provide information to the Court.

The above is only a brief summary of matters which professionals working within the Family Law space must now be across, and it will be interesting to see the caselaw which evolves.



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**Webinar Series from the AGD available
until August 2024**

WEBINAR SERIES

**Family Law
Amendment
Act Changes
from May 2024**

SESSION 1 : CHANGES OVERVIEW 2024

Watch here : <https://www.youtube.com/watch?v=CxVFCPXnUEs>

SESSION 2: FOCUS ON LEGAL PRACTICE

Watch here: <https://www.youtube.com/watch?v=u6RS9WNoWNE>

SESSION 3: FOCUS ON DISPUTE RESOLUTION AND WORKING WITH SEPARATED FAMILIES

Watch here: <https://www.youtube.com/watch?v=mrLnP0B0YGg>

SESSION 4: FIRST NATIONS PERSPECTIVES

Watch here: <https://www.youtube.com/watch?v=izG3tNvlz7c>

**FEDERAL CIRCUIT & FAMILY COURT OF
AUSTRALIA TOUR DATES**

BOOKINGS NOW OPEN

JULY

TUESDAY 9TH
WEDNESDAY 17TH

AUGUST

THURSDAY 8TH
TUESDAY 27TH

SEPTEMBER

WEDNESDAY 11TH

OCTOBER

TUESDAY 1ST
FRIDAY 11TH
TUESDAY 15TH

NOVEMBER

TUESDAY 5TH
TUESDAY 26TH

DECEMBER

TUESDAY 10TH
TUESDAY 17TH

Organized by Greater Brisbane
FLPN

Email:
pathwaysprogram@raq.org.au



FREDA ROSE WIGAN MEMORIAL BURSARY

About the Bursary

The Freda Rose Wigan Memorial Bursary is awarded by QACP in memory of Freda as an early member of QACP and a pioneer of Collaborative Practice in Queensland.

It is intended that the Bursary will be awarded on an annual basis from 2024 with the first Bursary to be announced in early August 2024. The Bursary will provide a grant of up to \$2,000 to an eligible candidate for the following:

1. to assist in the research of dispute resolution processes that:
 - (a) enable and empower parties settle disputes without resort to litigation; and
 - (b) enable and empower the advancement of the parties' ability to reach a mutual outcome for the benefit of each other and their families; or
2. to meet the cost of eligible basic Collaborative Practice training by a provider approved by the QACP Board.

Those interested in making a submission should refer to the attached [Guidelines](#) and [Application Form](#). Submissions must be emailed to bursarysubmissions@qacp.org.au by no later than 4pm (Brisbane time) on 20 July 2024. All queries in respect of the Bursary should be direct to Mr Andrew McCormack, Company Secretary, Queensland Association of Collaborative Practitioners Ltd by email to companysecretary@qacp.org.au or by telephone 07 3231 8859.

About Freda Rose Wigan **02/09/1973 – 22/11/2021**

Freda was a leader in Collaborative Law and Practice in Australia. Freda undertook extensive training both in Australia and the USA in Collaborative Practice.

Freda was a former president of Queensland Association of Collaborative Practitioners, a founding member, and the former secretary of the national collaborative practice body, the Australian Association of Collaborative Professionals, and a member of the International Academy of Collaborative Professionals.

In addition to Freda's work in the collaborative practice community, Freda was a Nationally Accredited Mediator, a Queensland Law Society Accredited Specialist in Family Law, and co-managed the large family and relationships law practice at Hopgood Ganim Lawyers, where she commenced her career in January 1996.

Freda was consistently recognised by the Doyle's Guide to the Legal Profession for her expertise in Family Law. Known for her passion for both Collaborative Law and Family Law, Freda devoted her life to her clients and her ongoing professional training and promoting the resolution of matters through all forms of dispute resolution – particularly Collaborative Practice.

Freda took great pride in her profession, her career, and her ability to collaborate with her peers. She was big hearted, warm, and generous of spirit. Freda was known for her ability to inspire those she mentored.

Freda's devotion towards her passion was recognised not only by her peers, but also by her husband, John, who frequently acknowledged he came "third place" - firstly to Freda's practise and secondly to their Havanese pet dog, Harvey.



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Save the date!

FLPN Networking Event

Children's Safety and Family Law - Everybody's Business



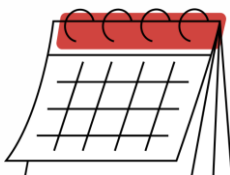
The Gold Coast Family Law Pathways Network invites you to attend our Luncheon Event at the Robina Events Centre - Anna Rose Room .



Speaker: Zoe Rathus (Senior Lecturer in Law, Griffith University)



Facilitator: Doctor Georgina Dimopoulos, (Senior Lecturer Law Southern Cross University)



- Thursday 5th September, 11:30-2:00pm
- Anna Rose Room - Robina TAFE
- Tickets \$35 per person (including lunch)
- Registration closes 15th August 2024



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Federal Circuit and Family Court of Australia



[YOU CAN SEPARATE SMARTER](#)

Did you know, you don't need to argue? If it is safe to do so, there is a better way to separate. You can take ownership of your dispute. This video provides tips on how to separate smarter - whether you agree or partially agree, perhaps you can't agree at all.



[HOW IS THE VOICE OF THE CHILD HEARD?](#)

The court process is designed to balance the need to protect children from conflict with the child's right to have a voice in decisions being made about them. This video is about how a child's voice is considered in a family law case in the Federal Circuit and Family Court of Australia.





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**Video Calling
1800RESPECT**

An information and safety guide

1800RESPECT is the national service that provides counselling, information and support to people affected by domestic, family and sexual violence.

24/7 support
Call: 1800 737 732
Text: 0458 737 732
Online Chat: 1800RESPECT.org.au
Video Call: 1800RESPECT.org.au

*Mon-Fri, 9am-5pm AEST (except national public holidays)

If you or someone else is in immediate danger, please call 000 now.

On 12 March 2024, Minister for Social Services, the Hon Amanda Rishworth MP and Assistant Minister for the Prevention of Family Violence, the Hon Justine Elliot MP, announced that people affected by domestic, family and sexual violence can now contact 1800RESPECT via video call.

As the national front door to support people affected by domestic, family and sexual violence, being accessible and inclusive is essential and it's an exciting milestone for the service to have four different channels in which individuals can connect with 1800RESPECT counsellors.



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Bravehearts
EDUCATE + EMPOWER + PROTECT

Protecting Children and Young People from Sexual Abuse: A Guide for Parents & Carers
– FREE RESOURCE

Developed by Bravehearts, and in consultation with leading child protection experts, this extensive resource is designed to help parents and carers start and maintain conversations that can help prevent child sexual abuse and exploitation. Now in its eighth edition, this free guide is a vital resource for all parents and carers, whether the children in your care are very young or in their teens, it will help you navigate tricky topics with confidence. Download the free guide today at the [Bravehearts website](#).



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RESOURCES & WEBINARS:



Referral Pathway Program The Referral Pathways Program is set up as a warm-referral pathway for clients experiencing DFV, family law, and/or child protection issues who require timely legal advice and lack capacity to seek out that advice for themselves due to their circumstances/vulnerabilities. Rather than the client having to make contact with LAQ, the Agency Partner working with the client can refer the client via our Referral Form and then LAQ can make contact with the client within 1-2 business days for one of our family lawyers to provide a free advice session. It is designed as one-off advice to help the client understand their legal issue and potential options. If clients have more than one legal issue or if they have received advice and then experienced a material change in circumstances (e.g. a Person Experiencing Violence received advice on taking out a DVO and now they need advice about responding to DVO that the Person Using Violence has taken out against them), then clients can be referred again. However, clients seeking multiple legal advice appointments about the same or unchanged issue need to apply for Grant of Aid funding for ongoing legal assistance. This warm-referral pathway doesn't replace any ways that clients already self-refer to LAQ, but it is designed to prevent vulnerable clients from falling through the cracks. It provides another option for clients to link with LAQ. We have an Agency Referral Partnership with the DFVMSS and DVAP services within the Gold Coast region. Practitioners from those services can make warm-referrals to LAQ on behalf of vulnerable clients to support their access to justice and timely advice to enable clients to make legally informed decisions.



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Accessible legal and social justice for a safer future for women and children



GOLD COAST FAMILY AND RELATIONSHIP SERVICES

Supporting Children after Separation

Individual Counselling

Brief intervention counselling (up to six session) to provide emotional support to children who are experiencing family separation or divorce, opportunities to express their thoughts and feelings in a confidential environment, and develop new coping strategies to help them adjust to any changes.

This is a FREE Service funded by the Australian Government.

Please call 5552 6500.



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