

FAMILY LAW INSIGHT SERIES

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The New Landscape: Why Family Court Psychological Reports Must Evolve

A guide for legal professionals and expert witnesses interpreting reports under the Family Law Amendment Act 2023

The *Family Law Amendment Act 2023* (effective 6 May 2024) fundamentally changes how the Court determines a child's best interests. Psychological reports must now be explicitly aligned to these legal requirements. Superficial, templated, or outdated reports risk being challenged or disregarded.

This tip sheet sets the foundation for the series by outlining the core legal changes and what they mean for psychological evidence in family law.

Why the Changes Were Necessary

The 2023 reforms were introduced in response to longstanding concerns that the previous framework was overly complex, inconsistently applied, and not sufficiently child-focused.

As identified by the Australian Law Reform Commission (2019), the use of undefined terms such as “*meaningful relationship*” and the presumption of equal shared parental responsibility and related equal time often led to confusion and misapplication, at times prioritising parental contact over substantiated safety concerns.

The Explanatory Memorandum to the Family Law Amendment Bill 2023 confirms that the new framework is designed to simplify the decision-making process and ensure that the child's safety and individual circumstances are placed at the centre of all parenting determinations.

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What Changed: A Overview

1. Six Unified Best Interests Factors – s 60CC(2)

The former two-tiered system of *primary* and *additional* considerations has been replaced with a single, unified list. The six new factors are:

- (a) What arrangements would promote the safety (including protection from family violence, abuse, neglect, or other harm) of the child and their carers
- (b) Any views expressed by the child
- (c) The child's developmental, psychological, emotional, and cultural needs
- (d) The capacity of each person to provide for those needs
- (e) The benefit of a relationship with each parent and other significant persons—if it is safe
- (f) Anything else relevant to the child's circumstances

Under s 60CC(2A), greater weight must be given to safety wherever family violence, abuse, or risk of harm is identified.

2. "Meaningful Relationship" No Longer in the Law

The term "*meaningful relationship*", previously central in s 60CC, has been removed from the legislation. It was never defined, and its use led to significant confusion, often resulting in recommendations that favoured parental contact even when psychological risk was present.

Now, the legal and psychological focus is on:

- The quality of relationships
- The benefit to the child
- Whether the relationship is safe and supportive of wellbeing

Reports should no longer default to recommending contact or time-sharing on the basis of "*relationship preservation*" alone.

3. Presumption of Equal Shared Parental Responsibility Repealed

The previous presumption that both parents should share parental responsibility has been formally repealed. This means:

- Equal decision-making is no longer a legal starting point
- Equal time is not presumed, nor should it be implied as developmentally appropriate
- Psychological reports must justify any recommendation for shared care or responsibility, based on the child's needs, not parental fairness or historical norms

This change intersects with s 60CC(2)(a), (c), and (f).

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4. Safety Must Be Explicitly Justified

The Court must now explain how any final parenting order promotes the safety of the child and their carers. This means:

- Reports must provide a substantiated analysis of risk, not general statements
- Protective and risk factors must be clearly articulated
- Conclusions must be specific to the child and supported by evidence

Generalised wording like *"the child may be at risk"* is no longer sufficient without structured clinical reasoning and identifiable behavioural evidence.

5. Cultural Identity: Strengthened Requirements for Aboriginal and Torres Strait Islander Children

Where a child is Aboriginal or Torres Strait Islander, the Act introduces specific, strengthened guidance requiring consideration of the child's cultural identity.

Psychological reports must now:

- Explicitly assess the child's connection to culture, community, Country, kin, and language
- Reflect an understanding of cultural continuity and safety
- Recognise cultural identity as integral to emotional and psychological wellbeing

This is no longer a peripheral or optional consideration—it is central to best interests determination under the amended Act.

Implications for Psychological Reports

Under the new legislation, psychological reports must now:

- Map directly to the six s 60CC(2) factors
- Give greater weight to safety where risk is identified (s 60CC(2A))
- Support recommendations with child-specific reasoning
- Avoid outdated terminology, such as *"meaningful relationship"* or assumptions of equal time
- Replace vague claims with measurable indicators, behavioural observations, and collateral data
- Explicitly address cultural identity, where relevant, using culturally competent assessment practices

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What the Tip Sheet Series Will Cover

Each subsequent tip sheet in this series will unpack one or more of the s 60CC factors and provide:

- What the law requires
- What high-quality psychological assessment looks like
- What lawyers should question or challenge
- How to distinguish robust reasoning from weak or templated conclusions

Topics will include:

- Allegations vs actual risk
- The reliability of children's stated views
- Assessing parenting capacity beyond surface functioning
- Understanding bonding vs emotional security
- Time-sharing through a developmental lens
- And more

This series equips legal professionals and expert witnesses to apply the new legal test with confidence—ensuring that psychological input is legally relevant, developmentally informed, and aligned with the best interests of the child.

Stay Tuned