



Hutchinson
Legal

Family Law
Act

Medical
Treatment

Staff
Spotlight

AUTUMN 2024

Insight

Change is constant

Autumn reminds us of the opportunities life gives us to experience change and growth through learning.

In this edition, we explore the changes to the *Family Law Act 1975* and who acts in the absence of a Medical Treatment Decision Maker Appointment.

Changes to the Family Law Act for parenting matters

Significant changes in family law parenting matters are set to come into effect on 6 May 2024, with amendments to the *Family Law Act 1975* ('the Act').

The key changes broadly include:

1. The removal of the presumption of *equal shared parental responsibility*.
2. Changes to the definition of what is considered to be "in the best interests of the child".
3. Clarification of the role of an Independent Children's Lawyer.

Removal of equal shared parental responsibility

Under the new amendments, the starting point of shared parental responsibility under section 61DA will no longer be that both parents have equal rights. From 6 May 2024 the Court will be more focused on allocating responsibility based on what is "in the child's best interests".

The Court can still decide that parents should have equal responsibility for the children, which is likely to be the outcome in most cases. However, the removal of the *presumption* of equal responsibility will make it easier for the Court to allocate responsibility to only one parent where it would not be appropriate for the responsibility to be shared, such as in situations of family violence.

Best interests of the child

The best interests of the child is still the paramount consideration when determining arrangements/decisions for the child. However, from 6 May 2024, the specific considerations that the Court must take into account in determining what is in the child's best interests have been simplified and streamlined. It is unlikely to change the outcomes, but is intended to make the process easier for parties to understand.



You can read the full article on our website at <https://www.hutchinsonlegal.com.au/resources/parenting-matters/>

If you have separated from your spouse or partner and you are working through parenting issues or arrangements, please telephone our family law team on 9870 9870 and one of our experienced team will be more than happy to provide you with valuable advice and assistance when dealing with these difficult issues.

"Autumn leaves don't fall, they fly.
They take their time and wander
on this their only chance to soar."

DELIA OWENS

FAST FACTS

One

The only native deciduous tree species in Australia is the *Nothofagus gunnii*, known as the Deciduous Beech and Tanglefoot.

867 kg

Weight of the largest Australian-grown pumpkin in Kyogle, NSW recorded at the 2021 Giant Pumpkin and Watermelon Festival.

1889

The year Vincent van Gogh checked himself into hospital and painted an image of its garden in Autumn. *The garden of Saint Paul's Hospital* ('Leaf-Fall')



Staff Spotlight

In this edition, we feature Philip Hayes a lawyer from the Litigation Team. Phil shares his insights on his career and how he supports his clients.

"Embracing a childhood inclination for arguing, my journey to becoming a lawyer was spurred by my father's insight into channelling my passion into a career. While initially drawn to acting, the realisation of the instability in the field led me to law.

Within the legal realm, my passion lies in various facets of court litigation, including criminal law and civil claims. The problem-solving aspects offer immense satisfaction as I apply my skills to secure favourable outcomes for clients, be it in criminal sentences or monetary settlements.

I prioritise client support by maintaining open communication throughout legal processes, ensuring clients are well-informed at every stage. Simplifying complex legal jargon is crucial – as lawyers, we can sometimes forget that we are speaking "legalese".

For those navigating legal representation for the first time, my advice is straightforward – if you have a legal problem, enlist a lawyer. It's our duty to shoulder your concerns and guide you through the complexities. Even a preliminary discussion with a lawyer can alleviate worries and set you on the right path.

Beyond work, my passion extends to playing drums in a band, where coincidentally another litigation lawyer is a bandmate. Additionally, I enjoy reading, watching movies, and indulging in culinary arts."

What is a Medical Treatment Decision Maker?

The *Medical Treatment Planning and Decisions Act 2016* (Vic) (the Act) governs the appointment of a person who is able to make medical decisions on your behalf, in the event that you are unable to do so for yourself. This situation could arise as a result of a serious crisis such as a car accident or a debilitating medical condition.

In such cases the medical profession is required to approach your Appointed Medical Treatment Decision Maker (MTDM) to make any medical decisions on your behalf. For example consent to emergency surgery may be needed or a decision may need to be made not to continue with medical treatment. In any event, appointing a MTDM is extremely important.

The Medical Profession is also required to follow any Advance Care Directive you have made, but if none is in existence it is your MTDM who will make the decision if you are unable to do so.

But what happens if you have not appointed anyone in the role of MTDM?

Section 55 of the Act sets out the following list of people who are able to make a medical decision in the absence of a MTDM:

1. A spouse or domestic partner; or
2. A primary carer (if applicable); or
3. The first of the following people and, if more than one person fits the description, the oldest of those persons –
 - a. An adult child; or
 - b. A parent; or
 - c. An adult sibling.

However, reliance on this section could lead to family disputes and disagreements and could result in the loss of valuable time for your treatment in crisis situations.

The best way to ensure that decisions about your medical care are within your control (as much as is possible when you are incapacitated) is to make a MTDM which appoints someone you trust and someone who you believe will make decisions which are in line with your wishes and your values.

The appointment needs to be made at a time when you have legal capacity.

If you require us to prepare a MTDM for you or you wish to discuss any aspect of this article, please telephone our Estate Planning Team on 9870 9870.



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