

The Female Senators

The Senate Legal and Constitutional Affairs Committee  
Canberra

Dear Senators Louise and Jane ,

**Family Law: power to order non-binding arbitration**

I am writing to you as this is a bipartisan Bill that needs women MPs to drive a better deal for women in relation to fair payments. By that I mean a job done. Women make the hospitals, trains and business run on time and we get the children off to school. While men talk. So as women, do what we do best: get the well-meaning but hopelessly disorganised male of the species organised!!

This Bill is a good start and Mr Porter, AG is to be congratulated for making a real effort which Senator Brandis QC did not and nor did Mr Dreyfus, QC. I used to be a lawyer, now a mum. Not in family law though, I did corporate finance law with one of the big 4 firms. When we got divorced I got advice of 70% and my husband, 50/50. It went to court. One of my girlfriends, a QC who does some family law back home, politely suggested that 70 was “way over the top” and that 58 was closer to it. But my husband had a lawyer who insisted in 50/50 “for all my male clients”. Quite silly as the system is based on needs not “standard positions”. He just wasted time. Therefore, against my own solicitors’ strong advice, I offered 58 but it was declined. Eventually I got 59 from a male judge. One thing that I think would make it faster is to give judges the power to require an “indicative” arbitration and narrow to 5% either side of that unless they see good reason why not to. Courts should always try to limit the dispute, but they just haven’t got the time.

In addition to the powers in this Bill about “overarching obligations” you should require couples (men, too often) who are far apart to be forced to move closer as early as you can. Especially self-represented males who waste precious judicial time arguing for 50/50 regardless of the facts. Technically everyone can go to court and argue their case. As a matter of law arbitration cannot be compulsory because of the pervasive judicial power of The Commonwealth: *TCL Air Conditioner v The Judges of the Federal Court of Australia [2013] HCA 5*. But it can be a precursor to something else such as compulsory property mediation under the Rules of Court and as a discharge of a general obligation to focus on real issues in dispute.

Instead of forcing a binding arbitration, make it a requirement to seek a fair early reading to assist mediation. But with the not so subtle hint that a judge will follow the arbitrator anyway in most cases and pay sums not reasonably in contention. Many arbitrators are retired judges and only charge \$3,000 for that. If you automate this pathway as a default scenario it would clear up so much, so fast, for so many. Exceptions can be if an arbitrator says material facts are missing, or a judge says they prefer not to because it raises key points of law, or the cost is too much for that couple, or they agree. Many couples would get the not so subtle hint and evacuate the courts quite rapidly. That’s got to be at least 50% of what judges spend time doing anyway – traffic directions.

My suggestion, and it would help so many women, is to limit the scope of arguments and effectively drain the bath water on solicitors who know they are miles away from reality. That would help judges’ workloads considerably because the quality of written explanation from retired judges is extraordinarily high and the existing judiciary would in effect be grade marking and looking for errors. It’s an outsourcing of the judicial workload at a cost on litigants, especially millionaires. When I worked I did a little bit of arbitration in London and it’s quick and inexpensive. For families it’s so much better than litigation.

Would you please kindly consider together ? All the male politicians seem to get nothing done, which is somewhat typical ! I am very sure Julie Bishop would do this because of her legal training. I usually vote Liberal, except I once voted for Tanya P because she is a person who gets things done. I don't think family law should be a political football, it should be an area where politics works and delivers. Only woman can deliver fo woman.

Thanks for considering.

Kind Regards

Sarah